

*This book belonged to the late  
Pres. John Adams, whose autograph  
was stolen as above appears, after  
I gave it to the Law Library. J. C.*

# PRAXIS

Curia  Admiralitatis

# ANGLIÆ.

IN LATIN and ENGLISH,

# PRAXIS

Curiae Admiralitatis

# ANGLIÆ.

AUCTORE

FRANCISCO CLERKE, olim  
Curiae Cantuar. de Arcubus  
Londin. Procuratore.

EDITIO TERTIA, prioribus multò correctior.

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THE  
PRACTICE  
OF THE  
*Court of Admiralty*  
OF  
ENGLAND.

Written originally in *LATIN*,

By the Eminent and Learned Civilian  
FRANCIS CLEKKE, Proctor in the  
Court of *ARCHES*.

*S. Greenleaf*

Now first translated into *ENGLISH*, for  
the Benefit and Use of all such as are  
concern'd in the Admiralties of *England*,  
all Masters of Ships, Mariners, and  
other Sea-faring Persons.

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## Advertisement.

**T**HE ensuing Tract being the only one that ever was publish'd relating to the Method of proceeding in Civil and Maritime Causes in the Court of Admiralty, and it being become scarce and difficult to be met with, induced Us to the Re-publishing of it, together with a Translation into our own Language, for the Benefit of those who are not so well acquainted with the Latin.





# P R A X I S

*Curie Admiralitatis*

## A N G L I Æ.

**Tit. 1.** *De modo inchoandi sive instruendi Actionem in suprema Curia Admiralitatis Angliæ; & de tenore Warranti seu Mandati Originalis Judicis.*

**S**I cui competit Actio in causa civili vel maritima contra Personam aliquam & contra bona, impetrand. est Warrantum seu Judicis Mandatum, ad hos respectivè effectus, *videlicet*, ad arrestandum, & per scapulas tenendum Reum, & ad detinendum sive custodiendum eum sub salvo & securo Arresto, donec legitimè comparuerit, vel ut habeatur tali die, *viz.* tertio, quarto, quinto, sexto, septimo, octavo, vel decimo die post Arrestum interpositum, si juridicus fuerit, alioquin proximo die juridico sequente extunc, in loco judiciali, seu ad jus dicendum solito:   
coram



# The PRACTICE of the Court of ADMIRALTY OF ENGLAND.

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*Tit. I. Of the Manner of beginning or instituting an Action in the High Court of Admiralty of England, and the Tenor of the Judge's Original Warrant or Mandate.*

**W** *However has an Action in a Civil or Maritime Cause against any Person or Goods, must obtain the Judge's Warrant or Mandate to these respective Effects, viz. To arrest and lay hold of the Defendant, and to detain and keep him in safe Custody till he has made a legal Appearance, or be forthcoming on such a Day, viz. On the Third, Fourth, Fifth, Sixth, Seventh, Eighth or Tenth Day after the Arrest, if it be a Court-Day; otherwise, on the next Court-Day following, in some Place where Justice is administred, before the Honourable Lord High Admiral or the President, Lieutenant, or*

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Judge

coram honorando Domino magno Admirallo Angliæ, aut supremæ suæ Curiae Admiralitatis Præsidente locum tenente seu Judice N. Mercator. London. in quadam causa Civili & Maritime de iusticia responsur<sup>9</sup>.

## 2. De Directione dicti Warranti,

**C**oncipitur nomine domini magni Admiralli Angliæ, dirigitur universis & singulis Justiciar<sup>9</sup> Constabulariis, Majorib. Ballivis, & cæteris officiariis domini nostri Regis, & presertim N. Mariscallo curiæ hujusmodi Warranta scribere sine decreto Judiciali, ut citatio ordinaria in Curiis Ecclesiasticis.

## 3. De modo exsequendi Warrantum.

**W**arrantum hujusmodi est tradendum dictæ curiæ Mariscallo, i. e. officario cuidam curiæ dictæ, ad hoc specialiter instituto, si persona arrestanda habitat vel versatur in Civitate London. aut Suburbis ejusdem, seu locis convicinis: alioquin alicui Majori, Ballivo, Constabulario, vel unicuique alii seu Officiario cujusunque civitatis, villæ, seu oppidi in quo pars arrestanda habitat, qui virtute ejusdem Reum arrestabit ei intimando causam arrestationis hujusmodi, & si arrestatus possit etiam cavere vel idoneæ fidei jubere de legitimè comparendo die & loco in dicto Warranto specificatis, ad respondend<sup>9</sup> Actori in dicta causa, est ab hujusmodi arrestatione liberandus. Si verò non possit ad hujusmodi effectus idoneè cavere, committendus, & custodiendus est sub arresto, donec ita sit ab eo fidejussus.

A. De



Judge of his High Court of Admiralty, to answer as to Justice shall appertain to N. Merchant of London, in a certain Civil and Maritime Cause.

## 2. Of the Direction of the Warrant.

**T**HE Warrant is made out in the Name of the Lord High Admiral of England directed to all and singular the Justices, Constables, Mayors, Bailiffs, and others His Majesty's Officers, and especially to N. Marshal of the Court. Such Warrants are usually drawn by the Register, without a Judicial Decree; after the manner of an ordinary Citation in the Ecclesiastical Courts.

## 3. How the Warrant is to be executed:

**T**HIS Warrant is to be delivered to the Marshal of the Court, that is, a certain Officer employed by the Court for that special purpose, if the Person to be arrested dwells within the City of London, or Suburbs, or neighbouring Places; otherwise, to some Mayor, Bailiff, Constable, or any other Officer whatsoever, of the City, Town, or Village where the Person to be arrested dwells, who by Virtue of the same shall arrest the Defendant intimating to him the Cause of the Arrest: And if the Person so arrested, can give good and sufficient Security for a legal Appearance on the Day and Place specified in the said Warrant, to answer to the Plaintiff in the said Cause, He is to be set at Liberty; but if he cannot give Caution to that Effect, then he is to be committed and kept under arrest, till he find such Security.



4. *De Interpositione Cautiois seu fidejussor' per arrestatum de legitime comparendo.*

**I**N calce sive fine appendic. cujuscunque Warranti cui apponitur sive affigitur sigillum domini Admiralli, summa in qua actio sit instituta, in his verbis (*Actio v. lib.*) scribitur. In tanta igitur summa edenda & interponenda est cautio fidejussoria per arrestatum de legitime comparendo ad effectus predictos. Caveat igitur officarius seu ballivus hoc Warrantum exequens, ut idoneos recipiat fidejussores, ne actio contra eum instituat, si reus per eum liberatus è carcerib. non comparuerit. Capta verò hujusmodi cautione fidejussoria Warrantum predictum una cum literis obligatoriis remittendus est judici vel parti actrici tradendum ante diem comparationis reæ, una cum nomine illud exequent. & die & loco hujusmodi executionis Warranti.

5. *Quid sit legitime comparere.*

**S**I pars ipsa personaliter vel ejus procurator legitime comparuerit in die comparitionis virtute dicti Warranti una cum fidejussorib. obligandis ad respective effectus mentionat. in titulo *De Introductione Fidejussor.* & fol. 16. dicitur legitima comparitio, tunc non. Sed si reus ipse comparuerit personaliter sine fidejussoribus ad effectus prædictos, est per judicem carceribus committendus, & ibidem detinendus durante lite, nisi interim fidejusserit. Judex tamen ex causis potest admittere juratori-

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4. Of the Caution or Security to be given by the Person arrested, for a Legal Appearance.

**I**N the Label of every Warrant which is to have the Seal of the Lord High Admiral to it, is wont to be set down the Sum upon which the Action is instituted, in these Words, (an Action of Five Pounds). Therefore, the Security taken from the Person arrested for his Legal Appearance to the aforesaid Effects, must be in the like Sum. And the Officer or Bailiff, that executes the Warrant must take care to have able or sufficient Bonds-men test an Action be brought against him, if the Defendant by him set at Liberty should not appear. Such Security being taken, the aforesaid Warrant, together with the Bond, is to be remitted to the Judge, or delivered to the Plaintiff before the Day appointed for the Defendant's Appearance together with the Person's Name who executed it, and the Day and Place where the said Warrant was executed.

5. What is meant by a Legal Appearance.

**I**F the Party himself, or his Proctor, doth personally appear on the Day appointed, by virtue of the Warrant, together with his Securities bound to the respective Effects mentioned in the Eleventh Tit. of bringing Security into Court; then it is said to be a Lawful Appearance; else not. But if the Defendant appears personally, without his Securities to the aforesaid Effects, he is by the Judge to be committed to Prison, and kept there as long as the Suit lasts, unless he gives Security in the mean time.

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am cautionem ad illos effectus ad quos interponendi fuissent fidejussores, saltem si sibi possit reum adeo pauperem esse ut non possit fidejubere. Et si pars introduxerit dictos novos fidejussores, vel in non introducendo commissus fuerit carceribus, liberantur ejus fidejussores a stipulatione ab eis capta pro legitima comparitione rei, & cautio obligatoria in ea parte interposita est tradenda, & arrest. est relaxandum.

#### 6. De Certificatorio dicti Warranti.

**P**rocurator actoris concipere debet Certificatorium super executione dicti Warranti per extensum, illudque sigillo aliquo authentico sigillari procurare ut Certificatorium in causis Ecclesiasticis, vel Mandatarius sine Mariscallo dictæ Curie, qui dictum mandatum executus sit personaliter in judicio faciet fidem de executione dicti Warranti.

#### 7. De procuratorio ad lites, & constitutione apud acta.

**P**rocuratorium ad lites in causis civilibus & maritimis est idem cum procuratoriis in Curii Ecclesiasticis; omnesque illas clausulas generales & potestates speciales continet, quæ in procuratorio generali ad lites, in Curii Ecclesiasticis dicitur constituentem dedisse potestatem & mandatum ejus procuratori in omnibus causis & negotiis. In isto procuratorio in civilibus adjicienda seu addenda sunt ad dicta verba (causis & negotiis) hæc verba (civilibus & maritimis.) Simi-

But the Judge may upon some Occasions accept of a Juratory Caution, that is, the Person's Oath for his Appearance and the same Effects for which Securities ought to have been brought; at least, if he is satisfied the Party is so poor that he cannot give Security. And in case the Party should bring the said new Securities, or be committed to Prison for not bringing any, the first Securities are released from their Obligation for making lawful Appearance and and the bond in that behalf given is to be deliver'd up, and the Person arrested to be set at Liberty.

## 6. Of Certifying the said Warrant.

**T**HE Plaintiff's Proctor ought to draw a Certificate of the Execution of the said Warrant at length, and get it sealed by some Authentical Seal, (like the Certificate in Ecclesiastical Causes;) or the Mandatory or Marshal of the said Court who executed the Warrant, shall personally in Court certify the Execution thereof.

## 7. Of a Proxy to carry on the Cause, and the manner of constituting him *apud acta*, i. e. in the Book of Acts.

**A** Proxy for carrying on Civil and Maritime Causes, is the same as a Proxy in the Ecclesiastical Courts, and contains all those general Clauses and special Powers, which in a general Proxy in Ecclesiastical Cases, gives the Person appointed [a Power and Mandate for managing all Causes and Businessess]; but in this Proxy for Civil Affairs, the Words [Civil and Maritime] are to be added to [Causes and Businessess.] And whereas in Ecclesiastical Causes, the Proctor

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Similiter in procuratorio ad lites in causis ecclesiasticis datur potestas procuratori petendi beneficium absolutionis seu relaxationis à quibuscunque suspensionum, excommunicationum, aut interdicti sententiis & Jure vel ab Homine latis seu ferendis simpliciter, vel ad cautelam. In procuratorio in causis civilibus omittenda est illa clausula, & loco ejusdem inserenda est hæc, nempe, Constituentem dare ejus procuratori potestatem legitimas cautiones, & fidejussores dandi & introducendi, nec non ex adverso dari petendi & obtinendi. [Quid verò sit constitutio aut stipulatio apud acta, lege Practicam Ecclesiasticam.]

8. De *Petitione Procuratoris Actoris tempore relati Warranti.*

**E**GO N. exhibeo procuratorem meum literatorie vel apud acta, si sit ita constitutus pro N. ac facio me partem pro eodem, & exhibeo mandatum Originale cum certificatorio in dorso ejusdem, vel super ejus executionem mandatarius praesens in judicio fecit fidem, & accuso contumaciae N. arrepti ad legitime comparendum istis die & loco tam juxta tenorem mandati praedicti quam juxta stipulationem seu cautionem fidejussoriam alias in hac causa captam, & penes registrum remanentem, vel jam per me exhibitum, & non comparentis, quare oro cum reparari contumacem & in penam suae hujusmodi contumaciae pronuncio incidisse in penam stipulatum fuit in commissam. Tunc iudex faciet Reum publice tria voce proconizari per Mariscalum Curiae, & eo non comparente, decerner enim incidisse in poenam stipulatam, & capiendum fore per scapulas donec solverit. Sed in isto



has Power given him to Petition for the Benefit of Absolution and Releasment from all Sentences of Suspensions, Excommunications, or Interdicts pass'd or to be pass'd by the Law or the Judge, either simply or conditionally; that Clause is to be omitted here, and this to be inserted in the room of it, viz. That the Party constituting does give to his Proctor Power of exhibiting and bringing in Legal Cautions and Securities, and also of praying and obtaining the same from the adverse Party.

**3. Of the Petition presented by the Plaintiff's Proctor at the return of the Warrant.**

**I** N. exhibit my Proxy in Writing, or at the Acts of Court, (if the Proctor be constituted in that manner) for N. and I make my self Part for the same; and I exhibit the Original Warrant with a Certificate endors'd, or the Mandatory has personally attested upon Oath the Execution of the same in Court; and I accuse N. of Contumacy, who has been arrested, for not appearing on this Day and Place, according to the Tenour of the Warrant, and the Caution and Bond in this Cause before taken, and remaining in the Registry, or now by me exhibited. Wherefore I pray he may be held Contumacious, and in pain of such his Contumacy, I pronounce that he has incurr'd the Penalty of his Bond. Then the Judge shall cause the Defendant to be thrice called by the Marshal of the Court, and if he does not appear, shall decree that he has incurr'd the Penalty of his Bond, and that he shall be taken into Custody till he has satisfied the Penalty. But in this Case of the Defendant's



isto casu non comparitionis reæ (in damnum actoris) protrahentis & tardentis litem, solet iudex allocare aliquam rationabilem partem summæ in casu prædicto non recuperato intuitu retardati processus & reliquam suo arbitrio disponere.

9. *De Petitione Rei si Actor non comparuerit in die assignato per executionem Warranti, nec causam suam prosecutus fuerit.*

**S**I Reus juxta arrestum & stipulationem alias per eum interpositum comparuerit ipse aut ejus procurator exhibendo ejus procuratorium literatoridè vel apud acta, dicer, *Allego N. presentem in judicio fuisse & esse autoritate Warranti sive Mandati hujus Curiae arrestatum ad comparandum istis die & loco ad respondendum M. in causa civili & maritima, & pro ejus personali comparitione fidejussores datos fuisse; partem tamen attricem nec per se nec per ejus procuratorem curare prosequi causam hujusmodi, quodque Dominus meus est promptus & paratus ad producendum fidejussores idoneos ad respondendum Actori in causa seu actione per eum instituta juxta juris exigentiam & stylum Curiae. Quare peto Dominum meum dimitti una cum expensis, & cautionem per eum interpositam pro ejus comparitione decerni seu cancellari.* Tunc iudex faciet actorem trina voce publicè proconizari per Mariscallum Curiae, & si nec per se, nec per ejus procuratorem comparuerit, nec causam prædictam prosecutus fuerit, Iudex, si sibi placuerit, potest aut eadem die decernere ut petitur, & condemnare actorem in expensis, vel decernere actorem in posterum non esse audiendum nisi refusus expensis factis per reum; vel Iudex potest

not appearing, it is usual for the Judge to allow the Plaintiff a reasonable Part of the Sum forfeited, in Consideration of the Suit being retarded, and dispose of the rest as he thinks fit.

9. Of the Defendant's Petition in case the Plaintiff fails to appear on the Day appointed by the Execution of the Warrant, and refuses to prosecute the Suit.

**I**F the Defendant himself, or his Proctor appears according to the arrest, and the Bond by him interposed for that purpose, then the Defendant or Proctor exhibiting his Proxy in writing, or in the Acts of Court, shall say, I alledge that N. now present in Judgment, was and is arrested by the Authority of a Warrant from this Court, to appear on this Day and Place, to answer M. in a Civil and Maritime Cause; and that Securities have been given for his Personal Appearance, but that the Plaintiff has not either by himself or his Proctor taken care to prosecute the Suit, and that my Client is ready and prepared to give sufficient Securities, that he will answer the Plaintiff in the Cause or Action begun by him, according to the Exigency of Law and the Style of this Court. Wherefore I pray my Client may be dismiss'd, together with Costs, and that the Caution given for his Appearance, may be cancell'd and decreed void. Then the Judge shall cause the Plaintiff to be thrice publickly called by the Marshal of the Court, and if he neither appears himself, nor by his Proctor, nor takes care to prosecute the Suit; the Judge may, if he pleases, decree according to the Petition of the Defendant's Proctor, and condemn the Plaintiff in Charges, or he may de-

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rest expectare comparitionem in unam vel alterum juridicum, & tunc decernere ut supra; vel Judex potest (& hoc est magis quotidianum) decernere partem vocandam fore erga aliquem diem competentem ad prosequendum causam sub poena finalis dimissionis una cum expensis, ut in Ecclesiasticis causis. Et si actor citatus non comparuerit, reus demittendus ut supra, una cum expensis, & perrecta scedula expensarum hujusmodi taxandæ sunt iudicis moderatione præcito juramento super taxatione. Sed de taxatione Expensarum. Monitione ad solvendum, & cæteris in hac parte incidentibus & de jure requisitis, lege Practicam in causis Ecclesiasticis, hoc excepto, quod in ipsa Monitione ad solvend' has expensas continetur etiam arrestatio, casu quo pars non curaverit expensas taxatas infra diem in monitione specificatam solvere, ut latius in aliis titulis in præsentī Practica scriptis apparet. Et nota, quodd licet reus arrestatus, ut supra, ad legitime comparendum ad respondendum in causa civili non comparuerit personaliter sed per ejus procuratorem legitimum una cum fidejussoribus obligandis ad effectum predictum, dicitur *Legitima Comparitio*.

10. De petitione Procuratorum hinc inde, si Reus & Actor.

**S**I Actor in die comparitionis Rei etiam comparuerit per se vel per ejus procuratorem, & accusaverit contumaciam Rei, ut supra in titulo *De Petitione Procuratoris tempore relati Warranti*, tunc reus comparens & stipulationi alias per eum interposuit, dicet per se vel

decree that the Plaintiff shall not hereafter be heard before he has paid the Defendant's Charges; or the Judge may allow a Court-day or two longer, in expectation of the Plaintiff's Appearance, and then decree as is said above; or the Judge may (which is the most usual way) decree the Party to be summoned against a convenient Day, in order to prosecute the Suit, upon Penalty of final Dismissal, and paying the Costs: And if the Plaintiff after this Summons should not appear, the Defendant is to be dismissed, as aforesaid, together with Costs. And a Schedule or Bill of Costs being given in, is to be taxed and moderated by the Judge, an Oath being first taken upon the taxing of them, that they are really disbursed. The taxing of Bills of Costs, and Admonition that is given for the Payment of them, and other incidents Circumstances, are much the same as in Ecclesiastical Causes, with this Exception only, That in the Admonition given for the Payment of Costs in Civil Causes, there is an Arrest join'd with it, in case the Party should refuse to pay the Charges as they are taxed by the Judge, within the time allow'd by the Admonition. And take notice, that altho' the Defendant, after he is arrested as aforesaid, to make his Legal Appearance and Answer in such a Civil Cause, does not personally appear, but by his Proctor lawfully constituted, and his Securities bound to the Effect aforesaid; it shall be took'd upon to be a Lawful Appearance.

10. Of the Proctor's Petition *hinc inde*, that is, on both Sides.

**I**F the Plaintiff himself, or his Proctor, appears on the Day the Defendant is to make his Appearance, and accuses the Defendant's Contumacy, (as is said before, under the Title of The Proctor's Petition

vel per ejus Procuratorem, *Peto libellum & fidejussores per partem adversam dari, vel partem meam dimitti una cum expensis.* Tunc procurator Actoris primo & ante omnia dicet, *Peto fidejussores idoneos dari per reum juxta juris exigentiam & stilum Curiae,* tunc judex assignabit partibus hinc inde ad fidejubendum in prox. & actori ad libellum eodem die.

## II. De Introductione fidejussorum per Reum & stipulatione ab iis captanda.

**R**eus introducere debet fidejussores ad hos effectus, de judicio sisti, de judicatis & expensis solvend. & de ratihabitione Procuratoris constituti vel constituendi; qui fidejussores submittere se debent jurisdictioni Curiae, & renunciare omnibus privilegiis & exemptionibus & tunc per stipulationem ab iis sive per judicem, sive de ejus mandato, & in ejus presentia per Registrarium capiendam recognoscent se debere Actori talem summam tantam, videlicet, pro qua actio instituitur, iis adjectis conditionibus vel legibus, quod si actor obtinuerit in causa ut reus fuerit condemnatus, tunc reus solvet actori non solum condemnationem, id est, sortem principalem, seu rem adjudicatam, verum etiam expensas litis per Judicem taxandas, & quod sistent partem principalem in judicio quoties jura volunt & personalis ejus comparitio requiretur, & quod reus rata habebit gesta per ejus procuratorem, & quilibet fidejussorum tenetur pro toto & in solido. Nota tamen, quod in isto casu Judex potest ex causa moderari summam hanc à dictis fidejussoribus capiendam, quia ali-



tion at the time of the Return of the Warrant,) then the Defendant appearing, according to the Bond before by him interposed, shall himself, or by his Proctor say, I pray that a Libel and Bonds-men may be given in by the adverse Party, or that my Client may be dismiss'd, together with his Expences. Then the Plaintiff's Proctor shall first and before all things say, I desire the Defendant may give proper security according to the Exigencies of Law and the Style of this Court. After which, the Judge shall assign the next Court-day for both Parties to give in their Securities, and direct the Plaintiff to present his Libel the same Day.

# II. Of the Securities to be given by the Defendant, and the Bond they enter into.

**T**HE Defendant ought to give Securities to these Effects, to abide in Judgment till the Suit be determined to pay Charges, and whatsoever else is adjudged, to confirm and allow of the Proctor already appointed, or to be appointed; which Securities ought to submit to the Jurisdiction of the Court, and to renounce all Privileges and Exemptions, and then by Bond given either to the Judge, or by his Order and in his Presence to the Register, they shall acknowledge themselves indebted to the Plaintiff in such a Sum, that is, the Sum for which the Action is brought, with these Conditions, That if the Plaintiff shall cast the Defendant, then the Defendant shall not only pay the Plaintiff the Principal Sum or Thing adjudged, but the Charges of the Suit as the Judge shall tax them; and that they will produce the Principal Party in Court, as often as his Personal Appearance is by the Law requir'd; and that the Defendant shall ratifie whatever his Proctor does, and every one of the Securities is bound for the whole. But observe here, that



aliquando actores, ut reus non possit fidejubere, sed ob defectum fidejussor. in tanta summa obligandorum, committetur carceribus instituunt actiones in multa majori summa quam a reo debetur.

**12. De Petitione & Protestatione Procuratoris**  
*Actoris tempore introductionis fidejussorum per Reum.*

**Q**uia aliquando Reus introducit fidejussores Actori incognitos & plerumque minus sufficientes aut idoneos, dissentiat igitur procurator eorum productioni, admissioni seu receptioni, & protestetur de insufficientia eorundem, & de petendo uberiores & magis idoneos, casu quo constabit eos non esse sufficientes, hæc enim protestatio est valdè necessaria, ne videaris in eos consentire, ita ut postea non possis petere uberiores.

**13. De Productione fidejussorum ex parte actoris**  
*& stipulatione ab eis capienda.*

**A**ctor etiam introducere tenetur fidejussores ad hos effectus, viz. de lite proseguenda, de expensis solvendis reo, casu quo succubuerit in causa, de rati habitione procuratoris, nec non, de sistendo actorem personaliter in judicio, quoties ad hoc de jure & stilo Curiae tenetur. Nam nota, quod quemadmodum actor uti possit responsis rei super positionibus libelli vel cujuscunq; materiae defensionis, exceptionum seu aliarum allegationum quarumcunque per eum datorum, & hic expedit, ut rei procurator dissentiat & protestetur tempore receptio-

the Judge, if he find Cause, may moderate the Sum in which the Securities are to be bound, because it sometimes happens that the Plaintiff institute their Actions for a much greater Sum than is due from the Defendant, to the end that he not being able to find Security for so large a Sum, may be thrown into Prison.

## 12. Of the Petition and Protest of the Plaintiff's Proctor, at the time of the Defendant's introducing his Securities.

**F**Orasmuch as it sometimes happens, that the Defendant offers the Plaintiff Persons for his Securities that are unknown, and often insufficient, His Proctor therefore in that Case must dissent, and protest against their Admission or Reception; and that he will Petition for having more proper and substantial Ones, if they shall appear to be insufficient. This Protest is highly necessary, lest by consenting and allowing of them at first, you should lose the Privilege of demanding better hereafter.

## 13. Of the Securities brought on the Part of the Plaintiff and his Bond.

**T**HE Plaintiff is likewise to give Security to these Effects, viz. That he will persevere in his Prosecution of the Suit; that he will pay the Defendant's Charges, if he be cast; that he will ratify his Proctor, and that the Plaintiff shall appear personally in Judgment, as often as the Law and the Style of the Court requires. For you must know, that (quemadmodum actor) the Plaintiff may make use of the Defendant's Answer to the Articles of the Libel, or any other Matter of Defence, Exceptions, or Allegations whatsoever, brought by him.

receptionis huiusmodi fidejussorum ut supra præcedenti titulo.

14: De Petitione Procuratoris ad uberius seu magis idoneè fidejubendum.

**L**icet fidejussores hinc inde recepti sunt, & postea Lis sit in causa contestata, vel forsitan ad conclusionem in causa producta, sed fidejussores sive rei sive actoris, non sunt idonei, tunc dicet procurator partis adversæ, *Allego N. & N. fidejussores ex parte N. in hac causa productos non fuisse nec esse sufficientes aut idoneos, habita consideratione ad gravitatem causæ (id est, si actio sit magni valoris) & quod iidem fidejussores vel talis fidejussorum, communiter habetur & reputatur apud notos & vicinos suos pro paupere, saltem non valente tali summa, viz. multo minori quam in qua actio constituitur, & ideo peto idoneos & sufficientes fidejussores dari ex parte adversa, alioquin decerni partem capiendam fore per scapulas, donec sufficienter & idoneè fuerit ab eo fidejussum.* Tunc procurator alterius partis dicet, *Dissentio & protestor de nullitate petitionis huiusmodi, ac inficior eandem esse veram; & allego esse satis sufficientes & idoneos ex parte Domini mei in causa fidejussum, & quod fidejussores ex parte mea producti sunt satis locupletes & divites ad respondendum actioni institutæ, & quod pro talibus sunt communiter dicti, tenti, habiti, nominati & reputati, & ideo Dominum meum non esse cogendum ad uberius seu ulterius fidejubendum in causa.* Et nota, quod licet fidejussores, dati per Reum fuerint idonei & sufficientes eo tempore quo recepti fuerint in fidejussores, tamen postea

And here likewise, it is convenient the Defendant's Proctor should protest when the Securities are offer'd, as the Plaintiff's Proctor did before.

14. Of the Proctor's Petition for better and more sufficient Security.

*Altho' Securities are given by each Party, and the Suit contested, or perhaps a Conclusion made in the Cause; yet if the Securities on either Side are insufficient, the Proctor of the adverse Party in that Case shall say, I alledge that such a one and such a one, produced as Securities for N. in this Cause, neither were nor are proper and sufficient, regard being had to the Weight of the Cause, (that is, if the Action be of any great Value) and that the said Securities, or such a one of them, is by his Acquaintance and Neighbours accounted a poor Man, at least not worth such a Sum, (mentioning one much less than the Action is brought upon) and therefore, I desire fit and sufficient Securities may be given by the adverse Party, or that a Decree be made for taking him up, till he has brought good and sufficient Security. Then the Proctor of the adverse Party shall say, I dissent and protest as to the Nullity of this Petition, and deny that it is true; and I alledge that my Client has in this Cause brought good and sufficient Security, and that the Persons who are his Securities are wealthy and rich enough to answer the Action instituted, and that they are commonly accounted, held and reputed as such, and therefore my Client ought not to be obliged to give any farther Security in the Cause. And you are to take notice, that also all the Securities brought by the Defendant*

postea lapsi sunt facultatibus. Ideo, ut superius dicitur, uberiores & alios in casu prædicto Reus tenetur dare. Similiter si fidejussores initio liris introducti, pendente eadem fatis cesserint, pars qui eos produxit cogi debet ad dandum alios.

*15. De Decreto Judicis quoad petita de novis dandis fidejussoribus.*

**D**E hac re aut quæstione, viz. utrum fidejussores sint idonei & sufficientes, necne, Judex potest & solet summarie cognoscere, ne circa hanc quæstionem principalis causa differatur, & partes infinitis expensis graventur. Id si Judici id statim constare potest per aliquos præsentis in judicio, (nam singulis juridicis intersunt mercatores, qui plerumque noverint facultates Rei) assignabit parti ad uberius & idoneè fidejubendum in proximo juridico vel alio die suo arbitrio designando. Si vero de præmissis constare non potest, assignabit ad audiendum ejus voluntatem.

*16. De forma probandi sufficientiam vel insufficientiam fidejussorum.*

**S**UMMARIA & non plena aut exacta probatio in hac causa requiritur, ideo si allegans insufficientiam fidejussorum procuraverit certificariorum sub manu collectoris Regii subsidii in illis partibus in quibus fidejussores familiam foveant, quod in libro subsidii non omnino, saltem ad exiguam, summam taxantur, vel ex certificariorum proborum virorum vicinorum hujusmodi fidejussorum & judici cognitorum fuit significatum hos fidejussores publicè reputari pro pau-



Defendant were at first sufficient and responsible, yet if they fail to be so afterwards, the Defendant in the aforesaid Case is to find others, and the same if during the Suit the Securities of either Party happen to die.

### 15. Of the Judge's Decree upon the Petition for fresh Security.

**U**Pon this Matter or Question, that is, whether the Sureties are sufficient? The Judge may, and is wont to determine briefly, lest the principal Cause should be allayed by that Dispute, and the Parties ag-griev'd with endless Expences. If the Judge can immediately inform himself of the Truth of that Matter by any that are present, for there are generally some present, that are acquainted with the Circumstances of the Securities; then he shall order the Party to bring new and better Securities against the next Court-day, or any other that he shall appoint; but if the Premises cannot be made appear, the Judge shall assign a time to hear his Pleasure.

### 16. Of the manner of proving the sufficiency or insufficiency of the Securities.

**A** Full and exact Proof is not requir'd in this Case; therefore, if he who alledges the Insufficiency of the Securities, can procure a Certificate under the Hand of the Collector of the King's Tax in the Country where the Securities dwell, that they either pay very little or nothing at all; or if it be certified under the Hand of some of their Neighbours, honest Men and known to the Judge, that they are reputed poor, at least not worth such a Sum; the Judge may then decree as before. On the other Hand, if the  
Party



pauperibus, saltem non valentibus tantam summam, Judex debet decernere ut supra. Et contra, si pars produxerit fidejussores, & probaverit modo præmissis, vel alias, sufficientiam fidejussorum per eum introductorum, tunc deneganda est petitio prædicta, de novis dandis fidejussoribus, aut expresse, aut tacite procedendo ad alia huic petitioni contraria.

17. *De Cautione interponenda per partem principalem pro indemnitate fidejussorum.*

**I**psa ac eodem tempore & in eodem actu in quo capta erat stipulatio seu recognitio fidejussorum, obliganda est pars principalis non solum ad omnes alios effectus ad quos obligati erant ejus fidejussores, verum etiam de conferendo hujusmodi fidejussores indemnes quoad cautionem per eos interpositam, hæcque cautio principalis partis solet fieri in duplici summa à fidejussoribus capta, vel in majori, quam in qua fidejussores obligati fuerint Judicis arbitrio limitanda.

18. *De Datione sive Oblatione Libelli.*

**E**ditis & introductis fidejussoribus hinc inde, dicet procurator actoris, *Do Libellum & peto decerni procedendum fore summarie & de pleno.* Quoniam omnes causæ civiles & maximæ sunt causæ summarie, ac eo modo est in eisdem omnibus procedendum, quo in causis summariis Ecclesiasticis proceditur, viz. decernendum est pro parte principali, assignandus est terminus probatorius, producenda est pars principalis, producendi sunt testes præsentés in judicio, concedenda est commissio pro testibus in patribus infra reg.

Party proves the sufficiency of his Securities either by the same means or otherwise, then the aforesaid Petition is to be rejected, either expressly or tacitly by proceeding to other things contrary to the Petition.

17. Of the Caution to be given by the Principal Party, for the Indemnity of his Securities.

**A**T the same time that the Securities enter into Bond, the principal Party is to be bound, not only to all the other Effects to which the Securities are bound, but to bear such Securities harmless, with respect to the Caution by them given; and this Caution of the principal Party, is generally in double the Sum that the Securities are bound in, or at least a much greater, as the Judge pleases to direct.

18. Of giving or offering a Libel.

**T**HE Securities being produced on both Sides, the Plaintiff's Proctor shall say, I give a Libel; and desire a Decree for proceeding summarily and plainly. Because all Civil and Maritime Causes are Summary Causes, and the Proceedings in them are to be in the same manner as in Ecclesiastical Causes; that is to say, It is to be decreed, that the principal Party shall appear, a Probatory Term is to be assigned, the principal Party and the Witnesses are to be produced in Judgment, a Commission is to be granted for examining Witnesses in remote Parts, as well within as without the Kingdom. And if the Parties to be examined dwell under the Jurisdiction

regnum, & sub mutua vicissitudinis obtentu & in iuris subsidium, extra Regnum. Atque procedendum est in eisdem Commissionibus. Hæque Commissiones sunt iudici competenti concedenti certificandæ, & testium publicatio perenda & decernenda. Et de jure est procedendum usque ad finalem sententiæ definitivæ prolationem inclusive ferendam, prout in causis Ecclesiasticis summariis, his sequentibus exceptis.

19. *De modo testificandi Decretum personale ad respondendum positionibus libelli, si reus citari non possit & decreto Iudicis.*

**L**icet omne originale Warrantum sive Mandatum Originale continet arrestationem persone reæ; tamen decretum, seu ut vocant Warrantum personale pro parte principali ad respondendum positionibus Libelli, continet tantum citationem, ut in causis Ecclesiasticis. Sed si reus vigore ejusdem citari non possit personaliter, quia latitavit, tunc est ita certificandum aut per ipsum Mandatarium personaliter in unum ejus juramenti, vel per certificarium authenticum, ut in causis Ecclesiasticis, & perendum est ut fideiussores vocentur ad comparandum aliquo die competenti ad sistendum partem principalem sub pena per eisdem stipulata. Tunc Iudex (decernimus) tamen relinquatur arbitrio Iudicis utrum voluerit decernere hoc decretum contra fideiussores, vel prius decernere partem principalem citandam fore personaliter, si ita possit apprehendi, alioquin viis & modis omnibus quibus melius aut efficacius noticia huiusmodi citationis ad aures ejus verisimiliter pervenire possit, viz. per affixionem mandati

dition of another Judge than whom the Cause is before; then in supply of the Law, that Judge's Authority is to be implor'd for the Execution of the Commission; and that Commission is to be proceeded upon, and afterwards to be certified to that competent Judge who granted it; and the Publication of the Witnesses is to be desir'd and decreed; and the whole Proceedings till the final pronouncing of the definitive Sentence, are to be in all Respects, the following excepted, as in summary Ecclesiastical Causes.

19. Of the manner of witnessing a Personal Decree for answering the Articles of the Libel, in case the Defendant cannot be cited; and of the Judge's Decree.

**N**otwithstanding every Original Mandate or Warrant contains an Arrest of the Defendant, yet a Personal Warrant or Decree for the principal Party to answer the Positions of the Libel, contains only a Citation as in Ecclesiastical Causes. But if the Defendant abscond, so that he cannot be personally cited, then the Mandatory is to certify the same upon Oath, or it is to be done by an authentick Certificate, as in Ecclesiastical Causes; and there must be a Petition that the Securies may be called upon to appear on some competent Day, to produce the principal Party, under the Penalty of the Bond by them entered into. Then the Judge may decree, but it is left to him whether he will at that time decree against the Securies, or first decree that the principal Party shall be cited Personally, if that can be done, or by all other ways and means which are most likely to give him notice of the Citation; as, by affixing the Mandate upon the Doors of his usual Habitation, or upon the Doors of

dati in foribus solitæ habitationis reæ, vel Ecclesiæ Parochialis, vel si sit Mercator *Londinensis* vel extraneus, per affixionem ejusdem in publico Excambio, cum major concursus Mercatorum ibidem habetur, & tunc vel alio mandato hujusmodi & parte comparente, decernere fidejussores vocandos fore ut supra ad sistendum partem principalem. Et nota, quod omnia quæ in præsententi titulo scripta sunt de parte principali rea, & de ejus fidejussoribus eundem locum habent de parte principali actrici ac de ejus fidejussoribus in casu quando reus intendit uti ejus responsionibus propositis & allegatis ex parte reæ. Et similiter nota, quod quamvis etiam in præsententi titulo dicitur, Quod si reus latitaverit & quod est decernenda, nova citatio personalis si ita possit apprehendi, Judex potest, cum primum Warrantum seu dicta citatio pro parte principali sit relata, quia pars latitavit, decernere eam partem arrestandam ac per scapulas capiendam si possit apprehendi, donec comparuerit; & si ita capi & Arrestari non possit, tum citanda viis & modis omnibus ut supra.

20. *De Petitione Procuratoris Actoris, si fidejussores rei moniti ad sistendum partem principalem non comparuerint nec sistunt eundem.*

**P**ROcurator actoris dicet, *Exhibeo verum mandatum originale una cum certificatorio in dorso vel super cujus executione Mandatarius præsens in judicio fecit fidem, & accuso contumaciam N. & N. fidejussorum ex parte reæ partis principalis monitorum ad personaliter sistendum istæ die & loco partem principalem petitionibus libelli alias con. dum dat. personaliter responsuram alioquin citatur ad comparendum istæ die & loco ad sistendum eandem partem*

ad



the Parish-Church, or if he be a Merchant, by fixing it up at the Exchange, at the time of high Change; and then if the Party appears, by another Mandate decree the Sureties to be call'd upon, as aforesaid, to produce the principal Party. And you are to observe, that every thing here said of the Defendant and his Securities, is applicable to the Plaintiff and his Securities, in Case the Defendant intends to make use of the Propositions and Allegations propounded and alledged by the Plaintiff. And you must also observe, that altho' 'tis here said, that if the Defendant absconds, a new personal Citation is to be decreed, if possibly he may be found that way; yet upon the return of the first Warrant or Citation for the Appearance of the principal Party, if he absconds, the Judge may decree him to be arrested (if he can be taken) till he appears; and if he cannot be taken or arrested, then to be cited by all Ways and Means, as above-mention'd.

20. Of the Proctor's Petition in behalf of his Client the Plaintiff, in case the Defendant's Securities, after they are admonished, do not appear and produce the Principal Party.

**T**HE Plaintiff's Proctor shall say, I exhibit the Original Warrant, together with a Certificate endorsed of the Execution of the same, or which the Mandatory has personally certified in Court; and I accuse N. and N. the Defendant's Securities of Contumacy, being admonished to produce Personally on this Day and Place the Principal Party, to answer Personally the Positions of the Libel; or being cited to appear for, or produce the Principal Party on this Day



ad effectum prædictum, juxta stipulationem per eos in hac parte interpositam vel ad dicendum causam quare non deberent declarari incidisse in hujusmodi commissum sub poenam stipulatam. Quare poto eos reputari contumaces, & in poenam declarari incidisse in hujusmodi commissum sub poenam stipulatam, & capiendam fore decerni donec soluerent commissum. Tunc fienda est publica preconizatio trina voce per Mariscalem Curia pro fidejussoribus, eisque non comparentibus, pronunciandi sunt contumaces & in poenam declarandi sunt incidisse in commissum. Hic tamen notandum est, quod Judex non solet quavis possit in primo die pro comparitione fidejussorum hoc decretum inter diem juridicum expectare, & erasinare eorundem comparitionem. Quod si factum sit caveat Procurator actoris, ut contingatur Certificatorium dicti Warranti contra dictos fidejussores introducti in diem deliberatorium datum per Judicem, ut si eadem die dicti fidejussores non satisfecerint contentis in dicto mandato, possit denuo accusare eorum contumacias, & petere ut prius; quod facere non potest, si circumductum, aut, ut vocant, discontinuatum sit Certificatorium prædictum. Et nota, quod si pars principalis infra annum aut alterum diem post interpositum decretum dictos fidejussores incidisse in poenam stipulatam & capiendam fore, & antequam illud fuerit in eosdem fidejussores executum, comparuerit, quod Judex non obstante ejus decreto prædicto potest hujusmodi poenam seu commissum suo arbitrio moderari; ita tamen ut aliqua pars moderata summa præstetur actori, ratione expensarum per eum factar. per retardationem processus.

Day and Place, to the Effect aforesaid, according to the Obligation by them enter'd into; or to shew Cause why they should not be declared to have incurr'd the Penalty of Contumacy: Wherefore, I desire that they may be reputed Contumacious, and declared to have incurr'd the Penalty of Contumacy; and that it be decreed, that They be taken into Custody till they have paid the Penalty. Then the Securities are to be thrice called by the Marshal of the Court, and not appearing, are to be pronounced Contumacious, and to have incurr'd the Penalty of Contumacy. But here it is to be noted, that altho' it is in the Judge's Power so to do, yet it is not usual to defer the Appearance of the Securities, to another Court-day; but if he does, let the Proctor take care to see the Certificate be continued upon the Warrant against the Securities, upon the Day given by the Judge to deliberate; that if the Securities do not comply with the Contents of the Warrant, he may accuse them of Contumacy, and desire as before said, which he may not do if the Certificate be discontinued. And observe, that if the principal Party appears within a day or two after the Interposition of the Decree, that the Sureties have incurr'd the Penalty of their Bond, and are to be taken up; and before the said Decree against the Securities is put in Execution, that then the Judge, notwithstanding the aforesaid Decree, may moderate the Penalty as he pleases; but so, however, that some part of the Sum thus moderated may be given to the Plaintiff, in Consideration of his Expences by the delay of the Process.

21. *De Petitione fidejussorum si non comparuerint in die eis dato, ad sistendum partem principalem.*

**C**ommuniter omnes actiones institutæ in Curia Admiralitatis tractantur inter Mercatores, tam domesticos quàm extraneos, nautas, & marinarios. Ideo si pars principalis, ad quem sistendum vocantur fidejussores, abfuerit à regno, vel fuerit in longinquis partibus regni isto tempore quo sisti debuisset, dicti fidejussores tenentur, ad eorum purgandam contumaciam, comparere, & præmissa impedimenta, nempe absentiam partis principalis allegare, & se promptos & paratos offerre ad sistendum partem principalem, quocunque die competenti, Judicis arbitrio designando; & si fidem de veritate hujusmodi allegationis fecerint, Judex debet & solet statuere aliquem diem competentem eisdem fidejussoribus ad sistendum partem principalem ad effectum prædictum juxta distantiam loci in quo principalis versatur. Erga quem diem procurator actoris petere debet, ut supra, continuationem Certificatorii alias per eum introducti contra dictos fidejussores, ut si non sisterent partem principalem eadem die, possit in pœnam eorum contumaciam petere eos incidisse in pœnam stipulatam seu commissum pronunciari. Potest etiam procurator actoris ex superabundanti, & ad majorem cautelam petere à Judice, ut mander dictos fidejussores cum præmissa allegaverint & petierint ad comparendum personaliter dicto die eis dato ad sistendum partem principalem ad videndum se declarari incidisse in commissum, casu quo hoc decretum de pronunciando dictos fidejussores incidisse

21. Of the Petition presented by the Securities, in case they do not appear upon the Day appointed to produce the Principal Party.

**A**LL Actions instituted or begun in the Court of Admiralty, are commonly between Merchants of our own Country or Foreigners, or Masters of Ships and Mariners. Therefore, if the principal Party, whom the Securities are call'd upon to produce, is either beyond Sea, or in some remote part of the Kingdom, at the time he should appear; the Securities, in that Case, to purge themselves of Contumacy, ought to appear and alledge the Reasons why the principal Party does not appear; and to alledge, that they are ready to produce him upon any competent Day to be assigned by the Judge, and if they prove or make out the Truth of their Allegations, the Judge ought, and is wont to appoint a competent Day for the Securities to produce the principal Party, to the aforesaid Effect, according to the Distance the Principal is at: Against which Day the Plaintiff's Proctor ought to desire the Continuation of the Certificate by him before given in against the Securities, that if they fail to appear and produce the Principal upon that Day, he may accuse their Contumacy, and desire they may be declar'd to have incurr'd the Penalty of their Bond. The Plaintiff's Proctor may moreover, for the greater Caution, desire the Judge to order the Securities, after they have made the Allegations, and petition'd, as aforesaid, to appear personally upon the Day assign'd them for producing their Principal, to hear themselves declared so have incurr'd the Penalty: In case that Decree of their having incurr'd the Pen-

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nalty,

incidisse in commissum decerni potest, in pœnam eorum geminatae contumaciae, si non comparuerint, & satisfecerint dicto Warranto, ut praefertur, in eos executo, & monitioni judiciali antedicto. Hic, duo sunt notanda; primò, quod si actor, vel ejus procurator suspicatur fidejussores Rei, animo protrahendi litem, dum tempus liberatorium ad sistendum partem principalem petere, & quod in die dato ad sistendum tunc ulterius animo hujusmodi litem differendi intendere aliquas frivolas allegare causas ad obrinendum secundas inducias ad sistendum eandem partem, utpote quod ægrotat, vel ita gravatur aere alieno, quod non audet comparere, vel saltem tunc petere commissionem ad partes pro ejus examinatione, potest in ipso die, quo dicti fidejussores primo tempus praedictum deliberatorium ad sistendum partem principalem interpellare Judicem, ut compellat eos tunc uti beneficio commissionis ad partem pro examinatione dicti rei sub pœna carentiae, id est, quod in posterum denegata eis commissio ad effectum praedictum. Secundum, quod Judex ex causa vel gratia possit admittere procuratorem ad comparandum pro dictis fidejussoribus, ad allegandum causas absentiae partis principalis, & ad petendum tempus ad sistendum eandem, vel commissionis pro ejus examinatione. Sed in isto casu ex necessitate continuandum est dictum Certificatorium in diem, seu potius in proximum diem juridicum, datum ad sistendum partem, ut si non sistatur, Judex possit pronunciare & declarare in pœnam contumaciae dictorum fidejussorum; quod fieri non potest, si discontinuatum fuerit Certificatorium dicti Warranti, ut profertur executioni contra dictos fidejussores.



nalty, can be decreed, upon pain of double Contumacy, if they fail to appear and comply with the said Warrant and Judicial Admonition, as is said before, served upon them. Here two things are to be observed, first, if the Plaintiff or his Proctor suspects that the Defendant's Securities do desire a deliberatory Term for producing the principal Party, with a Design of protracting the Suit; and upon the Day of their Appearance, alledge some frivolous Excuse in order to get more Time, such as that the principal Party is sick, or so indebted that he dares not appear, or if they should not before that time desire a Commission for his Examination; he then upon the first Application of the Securities for a Deliberatory Term to produce the principal Party, may move the Judge to oblige them to make use of the Benefit of a Commission for the Examination of the Defendant, upon pain of being denied the same Privilege hereafter. The second is, that the Judge may, if he see cause, or through favour, admit a Proctor to appear for the said Securities, to alledge the Cause why the principal Party is absent, and to desire time for his Appearance, or a Commission for his Examination; but in this Case it is necessary to continue the Certificate to the next Court-day appointed for the principal Party's Appearance, that if he is not produced by the Securities, the Judge may declare them to have incur'd the Penalty of Contumacy, which cannot be done if the Certificate of the Warrant's being served upon the Securities be discontinued.



22. *De Productione partis principalis & testium, & poena eis infligenda, casu quo non subierint examen juramento.*

**P**ROducendi & juramento onerandi sunt testes, & pars principalis, eo modo & forma quibus in causis Ecclesiasticis & monendi ad subeundum examen citra die per Judicem assignandum, sub poena quadam pecuniaria, aliquando in levioribus causis sub poena *xl. s.* aliquando in majoribus, sub poena *5. lb.* juxta Judicis arbitrium & causae gravitatem: Et, si non curaverint subire examen ante diem constitutum, eorum contumacia est accusanda, & pronunciandi sunt incidisse in dictam mulctam sive poenam. Et decernendum est eos capiendos donec eandem solverint, & subierint examen; ista summa est Judicis arbitrio distribuenda in pios usus, praesertim in pauperes incarceratos, & aliquando actori, si sit pauper, quia per hanc moram testium & partis principalis non subeuntium examen, processus est retardatus: solet etiam Judex in his casibus indulgere his testibus & parti principali, & continuare pronuntiationem eorum poenae in unum aut alterum juridicum, antiquam pronuntiat eos incidisse in dictam poenam, & esse capiendos, &c.

23. *De Compulsorio contra testes recusantes testimonium perhibere.*

**R**Equistis testibus & oblatis eis viaticis, ut in causis viaticis, si recusaverint venire, vel non venerint; decernendum est, eos capiendos fore per scapulas, & carceribus committendos, donec comparuerint.

24. *De*

22. Of the manner of producing the Principal Party and Witnesses, and the Penalty to be inflicted upon them, in case they do not submit to their Examination upon Oath.

**T**HE Witnesses and principal Party are to be produced and sworn, (in the same manner and form as in Ecclesiastical Causes) to undergo their Examination within the time appointed by the Judge, under some pecuniary Penalty by him named, as of Fifty Shillings, or Five Pounds, according to the moment of the Suit: And if they refuse to undergo the Examination within the time allotted, they are to be accused of Contumacy, and condemn'd in the Penalty aforesaid, and there is to be a Decree for their being taken into Custody till they have paid the same, and undergone their Examination. This Penalty or Money is to be dispos'd of at the Discretion of the Judge to Charitable Uses, especially to poor Prisoners, and sometimes to the Plaintiff, if he is poor, in Consideration of the Process being retarded by the delay of the Witnesses or principal Party. But 'tis customary for the Judge to shew favour to these Witnesses and principal Party, by deferring to condemn them in the Penalty aforesaid for a Court-day or two.

23. Of Letters Compulsory against Witnesses that refuse to give their Testimony.

**T**HE necessary Witnesses being requested, and the Charges of their Journey offered them, as is usual in such Cases if they refuse to appear, there is a Decree to go for their being taken into Custody, and imprison'd till they will appear.

24. *De alio modo procedendi in Causa Civili, si Reus are alieno gravatus, non possit arrestari; & de Warranto in hoc casu.*

**O**Mnia in præcedentibus titulis sunt intelligenda, quando Persona Rei sit arrestata in causa Civili. Nunc tractabitur de arrestandis Bonis Rei. Si igitur ita latitat, vel forsan abfuerit extra regnum, quo minus possit arrestari, tunc si habuerit aliqua bona, merces, vel navem, vel navis aliquam partem, seu cymbam super mare, vel infra fluxum & refluxum maris, tunc impetrandum est Warrantum ad hos effectus: *Ad arrestandum talia bona, vel talem navem, &c. ad N. id est, ad reum debitorem spectantia, in quorumcunque manibus existentia, & ad citandum apud bona huiusmodi N. debitorem in specie, ac omnes alios in genere, jus & interesse in bonis huiusmodi habentes, aut habere prætendentes, ad comparandum tali die, N. Mercatori in quadam causa civili & maritima, de iustitia responsurus.*

25. *De Executione dicti Warranti.*

**M**ariscallus, seu alius Judicis Officiarius, bona prædicta ubicunque fuerint, arrestabit, atque sub salva & secura custodia eadem servabit; citabit etiam apud eadem bona dictum reum, & alios quoscunque jus & interesse habentes in bonis huiusmodi, aut habere prætendentes. Dicendo publicè omnibus tunc præsentibus, & penes quos eadem bona tempore huiusmodi arresti remanebant, quod peremptoriè citat tam dictum N. reum in specie, quam omnes alios

24. Of another Method of Proceeding in a Civil Cause, where the Defendant is so indebted that he cannot be arrested, and of the Warrant in that Case.

**A**LL that is contain'd in the foregoing Chapters, is to be understood when the Defendant has personally been arrested in a Civil Cause. Now we shall treat of attaching his Goods: If therefore he is out of the Kingdom, or so absconds that he cannot be arrested, then if he has any Goods, Wares, Ship, or part of a Ship or Vessel upon the Sea, or within the Flux and Reflux of the Sea, a Warrant is to be taken out to these Effects. To arrest such Goods, or such a Ship, belonging to the Defendant, Debtor, in whose Hands soever they are; and upon the Attachment of such Goods to cite the Debtor specially and generally. All others who have or pretend to have any Right to, or Interest in the said Goods, to appear on such a Day, to answer the Plaintiff in a certain Maritime and Civil Cause.

25. Of the Execution of the said Warrant.

**T**HE Marshal or some other Officer belonging to the Judge shall arrest the said Goods, wherever they are to be found, and shall keep them in safe and secure Custody. He shall also at the time of the Arrest, cite the said Defendant, and all others having, or pretending to have any Right or Interest in such Goods; publicly declaring to all that are present, and to such as are in Possession of the said Goods at the time of the Arrest, that he peremptorily cites the said Defendant, and all others having or pretending

alios in genere, jus aut interesse in bonis arrestatis habentes, aut habere prætendentes, quod compareant, & quilibet eorum compareat, die & loco in Warranto prædicto specificatis, N. in causa civili & maritima de justitia responsuri.

26. De Certificatorio dicti Warranti.

**M**ariscallus certificare debet dictum Warrantum cum schedula bonorum arrestatorum ad diem quando, & locum in quo illud fuerit executus; & quod citavit Reum & ceteros juxta tenorem ejusdem. Sed si Mandatarius, qui hoc Warrantum fuerit executus, sit in remotis [regni partibus] ita ut personaliter certificare non possit, tunc hæc executio est certificanda per Certificatorium authenticum, ut supra in titulo de Certificatorio dicti Warranti &.

27. De Exhibitione, seu Judiciali Introductione dicti Warranti, & Petitione Procuratoris actoris.

**E**GO N. exhibeo procuratorium meum literatorie, vel apud acta, pro N. & facio me partem pro eodem, & exhibeo mandatum originale cum Certificatorio indorso, vel super quo Mariscallus præsens in judicio fecit fidem; & accuso contumaciam N. rei citati, & aliorum citatorum in genere jus & interesse in bonis arrestatis habentes, vel habere prætendentes, ad comparandum istis die & loco, dicti N. actori in causa civili & maritima de justitia responsuri. Et pæro eos & eorum quemlibet reputari contumaces & contumacem, & in penam incidisse decerni in primam defaultam.

to have any Right or Interest in the said Goods, to appear all and every of them on the Day and Place specified in the Warrant, to answer the Plaintiff in a Civil and Maritime Cause.

26. Of certifying the said Warrant.

**T**HE Warrant is to be certified by the Marshal, who is at the same time to deliver a Schedule of the Goods arrested, the Day when, and Place where the Execution was; and that he cited the Defendant according to the Tenour of the same. But if the Mandatory who executed the Warrant be in some remote part of the Kingdom, so that he cannot personally certifie, then the Execution is to be certified by an authentick Certificate, as is said before of the first Warrant. Tit. 6.

27. Of the Judicial Exhibition, or manner of bringing in the said Warrant; and the Proctor's Petition in behalf of his Client the Plaintiff.

**I**N exhibit my Proxy in Writing, or at the Acts of Court for N. and make my self Party for him, and I exhibit the Original Mandate with a Certificate endors'd, or which the Marshal has personally certified in Court; and I accuse the Defendant cited, of Contumacy, and all others having or pretending to have any Right to, or Interest in the Goods arrested, that have been cited in general to appear on this Day and Place in order to answer the Plaintiff in a Civil and Maritime Cause. And I desire them and every one of them may be reputed Contumacious, and in Penalty thereof

F

declared



*tam.* Tunc facta præconizatione publica tri-  
na vice pro citatis, tam in specie, quam in  
genere, eisque comparentibus, Judex pronuncia-  
bit eos pro contumacibus [reputari] & in pœnam  
hujusmodi contumaciæ declarabit eos, & quem  
libet eorum incidisse in primam defaultam ;  
tunc petet Procurator continuationem Certifica-  
torii dicti Warranti in proximum juridicum,  
seu alium diem per Judicem assignandum.

28. *De modo arrestandi bona vel nomina in ma-  
nibus aliorum, ad quæ arrestanda Officiarius non  
habet accessum.*

**A**liquando is qui tibi debet aut ex mutuo  
aut ex alio contractu maritimo aliquam  
summam non potest conveniri, ut eum possis ar-  
restare, nec etiam habet aliqua bona ad quæ  
arrestanda Mariscallus possit accedere, noveris  
tamen penes quem bona debitoris tui remanent,  
vel aliquam personam qui indebitatus sit tuo  
debitori ; in hac causa possis obtinere War-  
rantum ad effectum Warranti in titulo 24. *de  
alio modo procedendi.* Et Officiarius potest  
vigore ejusdem adire illam personam penes  
quam dicta bona remanent, quæ dicto debi-  
tori tuo obnoxia sint, eaque arrestare ad N.  
debitorem tuum spectantia, aut citare apud ea-  
dem bona eandem personam tibi indebitatam  
in specie, ac omnes alios in genere, &c. ut in  
dicto titulo. Et notandum est, quod in dicto  
Warranto bona & debita, seu pecuniarum sum-  
mæ, quæcunque ad dictum N. spectantia & in  
manibus dictæ personæ seu alterius personæ cujus-  
cunque remanserint, certificanda sunt in isto War-  
ranto ubi bona possunt per Officiarium arrestari.

29. *De*

declared to have incurr'd the first Default. Then Proclamation being thrice made for the Persons specially and generally cited, and they not appearing, the Judge shall pronounce them to be reputed Contumacious, and in Penalty of such Contumacy, shall declare that they, and every of them, have incurr'd the first Default. Then the Proctor shall desire the Certificate of the said Warrant may be continued to the next Court-day or other Day assigned by the Judge.

28. Of the Manner of attaching such Goods or Debts as lie in others Hands, and cannot be come at to be arrested by the Officer.

Sometimes it happens that the Person you have lent Money to, or is indebted to you upon some Maritime Contract, cannot be met withal, so as to be arrested; or it may be, has no Goods that the Marshal can come at to arrest; but you know where and in whose Possession your Debtor's Goods are, or at least some Person that owes your Debtor Money: In that case, you may sue out Warrant to the effect of the Warrant specified in the Twenty fourth Chapter; and the Officer may, by Virtue thereof, go to the Person who has the Goods or Debt belonging to your Debtor, and arrest the same, and cite the Debtor specially, and all others in general, as is before said in the Twenty fourth Chapter. And it is to be observed, that such Goods, Debts, or Sums of Money as belong to the said Defendant, whether they are in the said Persons Hands, or any others whatsoever, must be certified in such a Warrant as gives the Officer Power to seize, where Goods may be arrested by the Officers.

## 29. De Certificatorio dicti Warranti.

**E**ST certificandum ut illud prius Warrantum, & accusanda est contumacia citatorum tam in specie, quam in genere, & procedendum est in omnibus, tam quoad contumacias personarum in specie, quam aliorum in genere, prout in dicto titulo [de Exhibitione seu Judiciali Introductione Warranti, & de petitione Procuratoris actoris.] 26.

## 30. De modo procedendi, in dicto Arresto, si is in cujus manibus bona aut nomina arrestata sunt, comparuerit.

**S**I ille cujus manibus arrestantur bona, vel nulla nomina talia habuerit, tenetur comparere in die prædicto, & allegare se nec tempore interpositi arresti, nec citra, nec in præsentem penes se, aut in ejus custodia habuisse, aut habere, aliqua bona aut debita ad N. spectantia; & quod non steterit per ullam fraudem ullumne dolum [aut] malum quo minus remanerent. Et si hæc allegans fecit fidem de super ad scã. de Evangelia, est dimittendus, & frustra omnia acta sunt per actorem. Limita tamen, quod si actor ante hujusmodi præstitutum juramentum, voluerit allegare, & suscipere in se onus probandi aliqua bona vel debita prædicta, viz. seu debitoris remanere penes dictam personam arrestatam, est ad hoc admittendus, & si probaverit, debet ea recuperare per sententiam definitivam Judicis una cum expensis. Et nota, quod in isto casu dicta persona, quæ justificata fuit bona penes se remansisse est cogenda ad

29. Of the Certificate upon the said Warrant.

**T**His is to be certified in the same manner as the former Warrant, and the Contumacy of the Persons cited in special and in general to be accused and proceeded against in the same Form expressed in the Treaty between the

30. Of the manner of proceeding in the said Arrest, when the Person in whose Hands the Goods or Debts are arrested, appears.

**I**F the Person upon whom the arrest is served has no such Goods or Debts, he is obliged to appear on the aforesaid Day, and alledge that he neither has or had by him, or in his Custody, any Goods or Debts belonging to N. at the time of the Arrest, nor since, nor at present; and that it has not happened through any Fault or Contrivance of his, that they are not in his Possession. And if he makes Oath of the Truth of these Allegations, he is to be dismissed, and every thing done by the Plainriff is void; but with this Limitation, that if the Plainriff, before such Oath is made, will take upon him to prove any of the aforesaid Goods or Debts belonging to the Person indebted to him, are in the the Possession of the Person arrested, he is to be admitted to make such Proof; which if he does, he ought to recover them by the Judge's definitive Sentence, together with Costs. And observe, that in this Case the said Person who justified that the said Goods were not in his Possession, is to be compelled to answer the Plainriff by a Pro-  
tor

ad respondendum actori per dictum actorem in hac lite instituendum, & fidejubendum ad omnes effectus illos mentionatos in Tit. 11. de Introductione fidejussorum per Reum, & stipulatione ab eis capienda. Et è contra actor, tenetur fidejubere (ut) in titulo (13.) de productione fidejussorum ex parte actoris; & dandus est libellus, & in omnibus est procedendum ut in ordinaria causa maritima, quando agitur pro debito. Et actor, si, ut præfertur, defecerit, est condemnandus in expensis. In libello verò in hoc casu per actorem dando, non tenetur allegare aut probare debitum illius personæ quam in dicto Warranto prætenditur ei fuisse indebitatum, sed sufficit ad obtinendum in hac causa probare bona seu nomina dicti debitoris remanere in manibus dictæ personæ. Jam, hoc probato, cogenda est ad judicialiter introducendum & depouendum apud Judicem bona vel debita hujusmodi, & tunc actor tenetur recuperare eadem bona per defaultas, ut supra, si nullus comparuerit, & si actori quicquam debere inficiatus fuerit. In quo casu si interveniens hujusmodi introduxerit fidejussores obligandos ad effectus prædictos, bona arrestata, vel apud Judicem deposita sunt sibi tradenda, & actor tenetur dare fidejussores, ut supra, De concessione secundæ & tertiæ defaultæ. In omnibus casibus supra-dictis cum proceditur contra bona arrestata seu debita, & nec persona cujus bona prætenduntur esse arrestata, nec quisquam alius eadem vendicando comparuerit, procedendum est contra eos in pœnam eorum contumaciam, ut in prædicto titulo, (27.) de Exhibitione, seu Judiciali Introductione dicti Warranti. Et quemadmodum in primo die pronuntiandi sunt contumaces & in pœnam declarandi incidisse in secundam defaultam. Continuandum est



Not to be instituted in this Suit, and to find Securities to the Effects mention'd in Chap. 11. And on the other Hand, the Plaintiff is to find Securities as is mention'd in Chap. 13. and a Libel is to be given, and the Proceedings to be in all things the same as in an ordinary Maritime Cause for Debt. If the Plaintiff fails in his Proof, he is to be condemn'd in Charges. But in the Libel to be given in this case by the Plaintiff, he is not obliged to alledge or prove the Debt of that Person which by the Warrant is pretended to be his Debtor, but it is sufficient for him, if he proves the Debts or Goods of his Debtor to be in the Hands of the said Person. Now this being proved, He is to be compelled to bring in, and Judicially depofite such Debts or Goods with the Judge; and then the Plaintiff is to recover them by Defaults, as before, upon Non-appearance, or by a Contradictory Judgment. If the Debtor appears himself, and denies that he is indebted to the Plaintiff; in that Case, if the Person so intervening will give Security to the Effects aforesaid, the Goods under arrest, or deposited with the Judge, are to be deliver'd to him, and the Plaintiff must give Securities, as before, under the Title Of granting the second and third Default. In all the Cases before mention'd, of any Proceedings upon Goods or Debts arrested, if neither the Person to whom the Goods are pretended to belong, nor any other appears to claim them, they are to be proceeded against for Contumacy, as is set forth in Chap. 27. Of the Judicial Exhibition, or manner of bringing in the said Warrant, &c. And, as on the first Day, they are to be pronounced Contumacious, and in Penalty thereof, to be declared to have incur'd the second Default. The Certificate before brought

in,



est etiam Certificatorium, alias introductum in proximum vel alium juridicum Judicis arbitrio limitandum. In eodem vero secundo die juridico in omnibus est petendum, ut supra, id est, pronuntiandum est eos, & quemlibet eorum incidisse in tertiam defaultam, ac dictum Certificatorium est, ut supra, continuandum in proximum diem juridicum, & in illo tertio juridico, similiter petendum accusandum, & pronuntiandum est omnes prædictos incidisse in quartam defaultam.

31. *De Petitione Procuratoris, & (Decreto) Judicis postquam contumaces sunt pronunciati incidisse in quartam defaultam.*

**P**ROcurator actoris in isto die ex superabundanti debet accusare contumaciam dictorum citatorum tam in specie quam in genere præconizatorum & non comparentium, & in pœnam contumaciarum suarum hujusmodi dicet: *Do articulum ex primo decreto, & allego, poto, & cetera facio prout in eodem continetur, & peto eundem admitti & jus & justitiam fieri & administrari, & partem meam mittendam fore decerni in possessionem bonorum arrestatorum ex primo decreto.* Deinde *Judex præconizari faciat trina vice omnes prædictos citato tam in specie quam in genere eisque non comparentibus, pronuntiabit eos contumaces; & in pœnam dicet, Admittimus hujusmodi articulum.* Deinde Actor five ejus Procurator ad probandum contenta in dicto articulo, id est, ad probandum debitum petiturum, exhibere debet litteras obligatorias, aut alla hujusmodi, ex quibus petit hujusmodi debitum; & pars principalis tenetur facere fidem per juramentum corporale sibi per judicem datum de veritate

in, is also to be continued to the next, or some other Court-day, at the Judge's Appointment; on which second Court-day, the Proceeding must in all things be the same as above, that is, they, and every of them are to be declared to have incurr'd the Second Default, and the said Certificate is to be continued to the next Court-day, on which Third Day they are to be accused, and the Judge is to be petitioned, that all the aforesaid Persons may be pronounced to have incurr'd the Fourth Default.

31. Of the Proctor's Petition and the Judge's Decree, after the Contumacious Persons are pronounced to have incurr'd the Fourth Default.

**T**HE Plaintiff's Proctor ought moreover upon this Day to accuse the said Persons that have been cited specially and generally, and have not appear'd, being called upon, of Contumacy, and shall say, I give an Article by Virtue of the First Decree, and I alledge and petition, and do every thing else as is contained in the said Decree, and desire this Article may be admitted, and that Right and Justice may be done, and that it be decreed my Client may be put in Possession of the Goods arrested by the first Decree. Then the Judge shall cause Proclamation thrice to be made for the Persons cited in special and in general; and upon their Non-appearance shall pronounce them contumacious; and in Penalty thereof shall say, We admit such an Article. Then the Plaintiff or his Proctor to prove the Contents of that Article, that is to prove the Debt in question, ought to exhibit some Bond or other Instrument,

veritate debiti petiti. Quo facto, Judex solet perlegere, licet submissa voce, dictum articulum, & deinde dicere: Nos pronunciamus & decernimus prout petitur. Tunc procurator dabit schedulam expensarum, quam Judex taxabit, facta fide super taxatione hujusmodi, & per procuratorem seu partem principalem, & decernet bona arrestata apprecianda, & facta appreciatione juxta verum valorem eorundem, editis etiam per actorem fidejussoribus idoneis de respondendo quibuscunque jus in hujusmodi bonis recuperatis habentibus, & pro eodem intervenientibus infra annum sequentem, eandem partem dimittendam fore in possessione bonorum predictorum, quoad quantitatem debiti petiti, si ad hoc sufficiant, alioquin in quantum sufficiant.

32. *Que continentur in dicto Articulo ex primo Decreto.*

**A**ctor in Articulo hujusmodi declarare seu narrare tenetur factum; hoc est, quando, & ex quo contractu oritur debitum petitum, & in conclusione petere jus & justitiam, & se mittendum fore in possessionem arrestatorum bonorum, in quantum sufficiant ad solutionem debitorum petitorum. Hoc etiam addito quod non habuit spem aliam recuperandi debitum, nisi per arrestationem bonorum predictorum.

ment, by virtue of which he demands the Debt ; and the principal Party ought to make his corporal Oath before the Judge of the Truth of the Debt ; which being done, the Judge is wont to read over to himself the Article given in by the Proctor ; and then say, We pronounce and decree according to the Petition. Then the Proctor shall give in a Schedule of the Expences ; and the Judge shall tax the same upon the Oath either of the principal Party or his Proctor, that they have really been disbursed, and decree the Goods arrested to be appraised, according to their true Value, the Plaintiff also giving Security to answer any Person or Persons laying any claim to the Goods so recovered within the Term of the following Year, shall be put in possession of the aforesaid Goods to the Value of his demand ; or if they are not sufficient, to answer the whole, as far as they will go towards it.

32. The Contents of the Article upon the First Decree.

**I**N this Article the Plaintiff must set forth and declare the Fact, that is, when, and by what Contract the Debt arises ; and in the Conclusion desire that Right and Justice may be done, and that he may be put in possession of the Goods arrested, as far as they will answer the payment of his demands. And he must also add, that he had no hopes of recovering the Debt, but by arresting the aforesaid Goods.

33. De modo procedendi si ille comparuerit, ad quem in Warranto prædicitur bona arrestata spectare.

**S**æpe contingit, quod sicut in personali actione persona alicujus sit arrestata propter debitum, cum nullum deberetur; ita aliquando bona tua arrestantur pro debito supposito. In ista igitur causa quamprimum notitiam habueris bona tua arrestata esse, ne eadem per defaultas, modo præmisso, contra te recuperentur, & in pœnam tuæ contumaciæ adversarius tuus ex primo decreto mitteretur in possessionem eorundem, expedit ut compareas; & si introduxeris fidejussores de respondendo actioni institutæ ad omnes effectus in titulo (11.) de *Introductione fidejussorum per reum*, tunc relaxandum est arrestatum prædictum & bona tibi tradenda sunt. Et actor tenetur fidejubere, libellare, ac debitum petitum probare, & in causa procedere in omnibus, ut in actione instituta contra personam debitoris. Si tamen antequam intervereris pro interesse (tuo) fueris pronunciatus contumax, & Judex pronunciaverit te incidisse in aliquas defaultas, primo & ante omnia persolvendæ sunt expensæ hujusmodi contumaciæ, antequam tibi tradenda sunt bona prædicta, vel tu audieris in casu.

33. Of the manner of Proceeding when the Person appears to whom the goods arrested are said in the Warrant to belong.

**I**T often happens that as a Man is arrested in a personal Action for a Debt which in truth he does not owe, so your Goods are sometimes attached for a supposed Debt. In this Case, as soon as ever you know your Goods are arrested, lest they should be recovered against you in the manner before mentioned, for Defaults, and your Adversary should by the first Decree in Penalty of your Contumacy, be put in Possession of them; 'tis proper you should appear, and upon your giving Security to answer the Suit commenced to all the Effects mentioned in Chap. 11. then the Goods are to be released and delivered to you, and the Plaintiff is obliged to give Security that he will libel and prove the Debt in question, and proceed in all things as in a personal Action against the Debtor. But if before you appear in behalf of your Goods you should be pronounced Contumacious, and the Judge hath declared you to have incurr'd some Defaults; in the first place, and before all things, you must pay the Penalties of your Contumacy, before the Goods are deliver'd to you, or you can be heard in the Case.



34. *De Comparitione tertiae personae ad quam spectant bona arrestata, quamvis arrestantur tanquam bona alterius.*

**S**I bona (tua) arrestata sunt tanquam bona & pro debito alterius, si interveneris pro interesse tuo in iisdem ante prolatum primum decretum, persolvendae sunt integrae expensae litis, tempore prolationis dicti decreti antequam audiaris. Si vero comparueris ante latum huiusmodi decretum, expensae tantum defaultarum praedictarum sunt solvendae, ut in titulo praedicto. Quibus solutis proponendum & allegandum est interesse tuum, ac dandi sunt per te fidejussores de iudicio fisti, expensis solvendis, casu quo defeceris in probatione interesse tui huiusmodi, & ratihabitione procuratorii; pendente hac lite bona arrestata sunt sub arresto custodienda, vel sequestranda, ut in titulo (40.) *In quo casu bona sunt sequestranda, &c.* Et si probaveris interesse tuum, adjudicanda sunt tibi bona, & Actor est condemnandus in expensis; Et è contra, si defeceris, persolvendae sunt per te expensae Actoris.

35. *Quod Actor possit obtinere primum decretum tam contra eandem personam ad quem praeiudicabat bona arrestata spectasse, quam contra omnes alias personas, praeter comparentes.*

**L**Icet tertius interveniebat pro interesse in bonis per te arrestatis tanquam bona ad alium tibi indebitatum spectantibus, poteris tamen procedere, & prosequi dictum arrestum modo praemisso, contra dictum tuum debitorem,  
ac

34. Of the Appearance of a Third Person to whom the Goods arrested belong, altho' they are arrested as belonging to another.

**I**F your Goods are arrested as belonging to, or for the Debt of another, if you do not appear in behalf of them before the first Decree is made, the whole Charge of the Suit, at the time of making the said Decree is to be paid before you can be heard; but if you make your Appearance before the first Decree, then the Defaults aforesaid only are to be paid, as in the foregoing Chapter; which being paid, you must alledge and set forth your Interest in the said Goods, and give Security to abide in Judgment, pay the Charges if you fail of proving your Interest in them, and to confirm and allow of whatever your Proctor does in your behalf. Whilst the Suit is depending, the Goods are to be kept under arrest, or sequestred, as in the 39th. Chapter. If you make out your Interest in them, they are to be adjudged to you, and the Plaintiff condemn'd in Charges; if not, you are to pay the Costs to the Plaintiff.

35. That the Plaintiff may obtain the first Decree, as well against the the Person to whom he pretended the Goods arrested did belong, as against all others appearing whatsoever.

**A**Ltho' a third Person should appear and pretend an Interest in the Goods arrested by you as belonging to another who is your Debtor, yet you may proceed and prosecute the said Arrest against the Debtor and all others, except the Person appearing,

ac contra quosunque alios, excepto compa-  
rente, & in plenam ejus & aliorum contuma-  
ciam procedere, & obtinere primum decretum,  
& decretum de tè mittendo in possessionem  
bonorum prædictorum quoad cont. prædict.  
possessio tamen dictorum bonorum non est tibi  
tradenda, pendente lite inter te & dictum ter-  
tium intervenientem pro interesse.

36. *De tertio interveniente pro interesse post la-  
tum primum decretum.*

**I**Nterveniens pro interesse post prolationem  
primi decreti, non est audiendus; nisi primo  
solutis expensis taxatis tempore lati decreti, &  
tunc allegandum & proponendum est hujusmo-  
di interesse, ac dandi sunt fidejussores ad ef-  
fectus in titulo (34.) *De Comparitione tertiae per-  
sonae ad quam spectant bona arrestata*, tenetur  
tantum dare fidejussores de judicio sisti ex-  
pensis solvendis & ratihabitione procuratorii.  
Sed quamprimum procurator actoris sive rei  
functus est officio, & desinit esse procurator, quam-  
primum sententia definitiva sit lata, ita etiam  
functus est officio suo quamprimum obtrinit  
dictum primum decretum, & dominus suus fuit  
missus in possessionem bonorum, &c. Tamen  
quare, quia ad triginta annos elapsos maximè  
fuit inter doctissimos controversum. Ideo in-  
terveniens hujusmodi pro ejus interesse, tene-  
tur vocare partem principalem si in humanis  
egerit, vel ejus fidejussores obligatos, ut supra  
de respondendo quibuscunque, ut in titulo (31.)  
*De petitione procuratoris & decreto Judicis*, &c. ad  
dicendum causam quare non deberet admitti ad  
proponendum interesse suum in talibus bonis  
nuper utcunque per primum decretum talia bona  
ad

pearing, and proceed upon their Contumacy and obtain the first Decree, and a Decree for putting you in Possession of the aforesaid Goods, as far as they will satisfy your Demand, but you are not to be put in Possession of them as long as the Suit between you and the said Third Person is depending.

36. Of the Third Person claiming an Interest after the first Decree.

**T**HE Person appearing and claiming an Interest after the first Decree is not to be heard before he has paid the Costs as they were taxed at the time of making the said Decree, after which he may propose and alledge his Interest, giving Security to the Effects mentioned in the 34th. Chapter. But as the Proctor's Office (whether he be for the Plaintiff or Defendant) ceases after the Definitive Sentence is pronounced, so it also does after the first Decree is made, and his Client put in Possession of the Goods. Yet this Point, says Mr. Clerke, has been very much disputed by the Learned for these Thirty Years past.--- Therefore, the Person intervening and claiming an Interest, must call upon the principal Party if alive, or upon his Securities bound to answer all Persons, as in the 31st. Chapter, to shew cause why he may not be admitted to propose his Interest in such Goods, newly belonging, by the first Decree, to such a one, or to see such his Interest is admitted. And if the Persons cited in this Case should not appear,

ad talem spectantia, &c. & ad videndum interesse hujusmodi admitti. Et, si citati in hoc casu non comparuerint, decernendum est Warrantum ad arrestandum eos, &c. donec comparuerint. Si vero comparuerint, probare debet dictus tertius interveniens hujusmodi interesse suum, & est in omnibus procedendum, ut supra, in causa ordinaria. Et si illud interesse suum probaverit, bona prædicta recuperabit ut præfertur per primum decretum, si extant; alioquin eorum verus valor juxta appreciationem modo præmissa tempore primi decreti factam, sunt sibi adjudicanda, una cum expensis ea occasione factis. Et si defeceris, præstare debes expensas adversarii.

37. *De modo arrestandi bona tua propria per alium detenta, occupata, sive possessa.*

QUum sæpe fit, præsertim tempore belli seu Guarræ, quod bona seu navis tua sunt per hostes vel piratos capta, & postea fortè fortuna ad hoc regnum deducta; vel si bona tua sint quocunque modo occupata, possessata, seu detenta; vel si factor, aut negotiorum tuorum in partibus transmarinis gestor, ad tuum usum & computum signavit tibi quædam bona, alius tamen eadem detinet, vel injustè occupat: In his casibus obtinere potes Warrantum ad arrestandum hujusmodi bona, tanquam bona tua propria, cum citatione in eodem, tum contra detentores seu occupatores eorundem in specie, tum contra quoscunque alios in genere jus aut interesse in eisdem habere prætendentes, ad respondendum in causa civili & maritima. Quo Warranto executo & relato, ut supra,  
fi



a Warrant is to be granted to arrest them till they do appear; and upon their Appearance, the said Third Person intervening must make out his Interest, and the Proceedings are in all things to be as is said before, in an ordinary Cause: And if he does prove his said Interest, he will recover, as before-said, the Goods, if they are in Being, by the first Decree, or their true Value, according to the Appraisement made of them upon the first Decree, together with his Expences upon that occasion; but if he fails to prove or make out his Interest, then he must pay the Charges of his Adversary.

37. Of the manner of arresting your own Goods, when detain'd, possess'd, or made use of by another.

**W**Hereas it often happens, especially in time of War, that your Goods or Ship is taken by Enemies or Pyrates, and afterwards by Chance brought into this Kingdom; or if any Goods belonging to you are made use of, detained, or possessed by another; or if your Agent or Factor abroad has consign'd Goods for your Use and Account; but they are unjustly made use of, or detain'd by another; in these Cases you may obtain a Warrant to arrest such Goods, as your own proper Goods, with a Citation in the said Warrant against the Detainers and Possessors of them in special, and against any others pretending to any Right or Interest in them in general, to answer in a Civil and Maritime Cause; which Warrant being executed and return'd in the manner aforesaid, if no one appears, you must proceed in all things as before, and after the Fourth Default the Goods are to be adjudged to you, not as your proper Debt, as in



si nullus comparuerit, procedendum est in omnibus, ut supra, & post quartam defaultam, tibi adjudicanda sunt non pro debito tuo proprio, ut priori casu, sed pronunciandum est, in poenam contumaciae non comparentium, eadem bona ad te spectare, &, tanquam tua bona propria, es in possessionem eorundem mittendus; edenda etiam in hoc casu est per te cautio fidejussoria, ac bona praedicta sunt aprecianda, ut in titulo (31.) *De petitione procuratoris*, &c.

### 38. *De modo procedendi in possessorio.*

**S**I bona tua tanquam alterius bona fuerint arrestata, & tu sive per teipsum, sive per alium tuo nomine & ad usum tuum, fueris tempore hujusmodi arresti in possessione eorundem, comparere potes coram Iudice, & allegare ut sequitur: *Comparuerit personaliter N. & ad omnem juris effectum, &c. allegavit, quod tempore interpositi arresti, ipse fuit in quietâ & pacifica possessione bonorum arrestatorum, non vi, clam, metu, nec praevario, & petiit possessionem bonorum arrestatorum sibi primo & ante omnia decerni, seque teneri in possessione eorundem ac arrestum alias in eosdem autoritate hujus Curiae interpositum relaxare, ac jus & justitiam* ---- Si Actor possessionem hujusmodi justificatus fuerit, ea est probanda postquam propositum fuit contrarium. & diem ac admissio. *Expedi* etiam ut fiat per te protestatio quod non intendis in Peritorio procedere, sed in Possessorio tantum. Actor etiam qui bona praedicta tanquam sua arrestavit, allegare potest, se fuisse & esse possessorem dictorum bonorum, & replicare quod fiet quatenus dictus N. unquam fuerit de facto in possessione bonorum arrestatorum, quod eandem obineat per vim, yio-

the former Case ; but in Penalty of their Contumacy in not appearing, the Goods are to be pronounced to belong to you, and as your own proper Goods, you are to be put in Possession of them : But in this Case you must give cautionary Security, and the Goods are to be appraised as in the 31st. Chapter.

### 38. Of the manner of pleading a Possessory Right.

**I**F your Goods are arrested as belonging to another Person, and either you your self, or some other for you, or in your Name, are in Possession of the said Goods at the time of the Arrest, you may go before the Judge and alledge as follows, That such a-one appeared Personally, and to all intents of the Law, &c. and alledged that at the time of the Arrest, he was in quiet and peaceable Possession of the Goods arrested, not by force, fear, secretly or precariously ; and desired, that first and before all things, the Possession of the said Goods may be decreed to him, and that he may be maintain'd in the said Possession, and that the Arrest laid upon them by the Authority of this Court may be taken off, and Right and Justice done. If the Plaintiff justifies such Possession, he is to prove the same on a Day appointed for that purpose. It is also convenient for you to protest that you do not design to proceed in Peritorio, but in Possessorio only. The Plaintiff also who caused the Goods to be arrested as his own, may alledge that he was and is in Possession of the said Goods, and reply, that the said N. was in Fact never in Possession of the said Goods arrested ; but that he obtained the same by Force, Violence, or by a Trick,  
*And*

violentiam, metum, dolum malum, vel precario, & si hinc inde procedendum est in possessione, ut qui eandem probaverit, per sententiam definitivam, obtinebit possessionem hujusmodi bonorum, & postea partes hinc inde, si per hanc sententiam gravati fuerunt, procedere possunt in Petitorio.

39. *De modo procedendi in Petitorio.*

**I**LLE cui possessio bonorum prædictorum per sententiam Judicis sit adjudicata, si adversarius ejus voluerit litigare & procedere in Petitorio, & probare bona prædicta ad eum spectare, tenetur antequam realis possessio dictorum bonorum sit sibi tradenda, edere cautionem fidejussoriam de respondendo dicto Actori in Petitorio, hoc est, de restituendis bonis prædictis, de eisdem non barratandis, casu quo Actor obtinuerit in Petitorio, & de judicio fisci, & expensis solvendis, & ratihabitione procuratorii, & bona sunt per Judicis decretum per peritos & probos aprecianda, & juxta valorem eorundem æstimanda. Et quemadmodum Actor in isto casu ita interveniens & obtinens possessionem, potest proponere ejus interesse & jus in prædictis bonis, & procedere in Petitorio, & probans obtinebit sententiam cum expensis; & contra est in hoc negotio Petitorio procedendum in omnibus, ut in cæteris causis maritimis. Et nota quod Actor antequam fuerit admissus ad proponendum interesse suum in Petitorio, tenetur dare fidejussores de lite prosequenda, & de ratihabitione procuratorii, & de judicio fisci.

and if both Parties proceed upon the Possession of the Goods, he that proves the same, shall be put in Possession of them by a Definitive Sentence; and afterwards either Party aggrieved by the Definitive Sentence, may proceed in Petitorio.

39. Of the manner of Proceeding in a Petitory Suit.

**T**HE Person who is put in Possession of the aforesaid Goods by the Judge's Sentence, if his Adversary will continue to dispute and proceed in Petitorio, and prove that the Goods belong to him, is obliged before he is put in real Possession of them, to give Security to answer the Plaintiff in Petitorio; that is, to restore the aforesaid Goods and not to embezzle them, to abide the Determination of the Court, to pay the Costs, and approve of and confirm what his Proctor does in his behalf, in case the Plaintiff gets the better, and the Goods are, by the Judge's Decree, to be appraised according to their just Value by skilful and honest Persons. And as the Plaintiff in this Case, so a Third Person intervening and obtaining Possession, may propose his Right and Interest in the said Goods, and proceed in Petitorio, and proving the same, shall have Sentence given for him with Charges. And the Proceedings in this Petitory Suit, are to be just the same as in other Maritime Causes. And take notice, that before the Plaintiff can be admitted to propose his Interest in a Petitory manner, he must give security, that he will prosecute the Suit, abide the Determination of the Court, and approve of whatever his Proctor shall do in his behalf.

40. *In quo casu bona sunt sequestranda, vel sub arresto custodienda.*

**P**Endente dicta lite in Possessorio vel Petitorio, bona sunt sequestranda & neutri litigantium tradenda. Sed si bona sunt talia quæ servand. servari non possunt, vel si custodirentur, non solum peritura, sed etiam multo minoris pretii & valoris essent in fine litis, Judex, petente una parte, quamvis altera dissentiente, si de præmissis sibi possit constare, potest decernere hujusmodi bona de verisimili peritura, per homines peritos & indifferentes per partes hinc inde nominandos, ac per Judicem approbandos, aprecianda, & valor seu pretium ex eisdem bonis receptum, est penes Judicem, seu apud ejus registrarium ad usum jus habentis, & obtinentis-----

41. *Quid si plures arrestarunt una & eadem bona pro eorum respective debitis.*

**A**Liquando una persona diversis est debitata, & adeo creditores hujusmodi per diversa Judicis Warranta, bona debitoris hujusmodi, pro recuperandis eorum respective debitis, arrestari obtinent, bona tamen arrestata non sufficient ad solutionem omnium hujusmodi debitorum; is igitur in isto casu præferendus est, & obtinebit primo Judicis decretum de mittendo in possessionem qui primo actionem prædictam instituit, vel bona prædicta arrestari procurabit; hujusmodi etiam ordo & forma observandus est quoad reliquos creditores, viz. illi



40. In what Case Goods are to be sequestred, or kept under Arrest.

*W*hilst the Suit is depending, either in Possessorio or Petitorio, the Goods are to be sequestred, and not deliver'd to either of the contending Parties ; but if the Goods be such as by keeping will be spoiled , or lose much of their Value before the Suit be ended, the Judge, upon the Petition of one of the Parties, altho' the other dissent, may, if it appears to him that the Goods will perish, or be less worth by keeping, decree such Goods as are likely to perish, to be appraised by honest and indifferent Persons, to be named by both Parties, and approved by the Judge, and the Value or Price of them to be deposited with the Judge or his Register, for the use of the Person who is found to have a Right to them.

41. What is to be done if several Persons arrest the same Goods for their respective Debts.

*I*T sometimes happens, that one Person is indebted to many, whose Creditors take out several Warrants, and arrest his Goods for the recovery of their respective Debts, but the Goods are not sufficient to answer all ; in this Case therefore, that Creditor is to be preferr'd, and will first obtain a Decree from the Judge for putting him in Possession, who first began the aforesaid Suit, or procur'd the Goods to be arrested. The same Order is to be observed as to the rest of the Creditors,

I

and



illi sunt præferendi cæteris, qui primo bonæ arrestarunt; & si, soluto debito primi debitoris, cuivis, non omnibus, perfolvenda.

#### 42. De Juramento Calumniæ.

**D**E hoc Juramento Calumniæ, & de Capitibus ejusdem, & in quibus casibus præstari debet, nec non de Juramento Malitiæ non committendæ, lege titulos in *Practica Curiarum Ecclesiasticarum*, in quibus de his particulariter tractatur.

#### 43. De Propositione materiæ defensionis, de propositionibus Exceptionibus, de corroboracione testium.

**D**E his etiam omnibus plene tractatur in *Practica Curiarum Ecclesiasticarum*. Nota tamen, quod in ista Curia Admiralitatis juxta antiquum stylum & consuetudinem ejusdem, admittuntur exceptiones in genere, dato termino competenti Judicis arbitrio constituendo ad has generales exceptiones specificandas; & tamen ad illas in genere, quam specificatorias probandas, unus aut idem datur terminus, id est, si admissis prædictis Exceptionibus in genere, datus fuerit terminus probatorius ad eas probandas, & postea date fuerint Exceptiones in specie, seu specificatoria, non est affig-

and if any Goods remain after the Demand of the first Creditor is satisfied, they are to go to one, not amongst them all.

42. Of the Oath of Calumny.

**T**HE Oath of Calumny is generally administred immediately after the Suit is contested or Issue join'd, to either of the Parties, or both, as the Judge thinks fit, in this or the like Form, [See Clerks Ecclesiastical Practice for the Oath of Calumny.]

"You shall swear that you believe the Cause  
"you move is Just; that you will not deny any  
"thing you believe is Truth when you are asked  
"of it; that you will not (to your Knowledge)  
"use any false Proof; that you will not out of  
"Fraud request any Delay, so as to protract the  
"Suit; that you have not given or promised any  
"thing, neither will give or promise any thing in  
"order to obtain the Victory, except to such  
"Persons to whom the Laws do permit.

So help, &c.

43. Of propounding matter of Defence and Exceptions, and corroborating of Witnesses.

[See Confess. Part III. ch. 4. § 6.]

**A**LL these matters are likewise fully treated of in the Practice of the Ecclesiastical Courts; but you must observe, that it is the ancient Custom or Style of the Court of Admiralty to admit of Exceptions in General, and for the Judge to appoint a certain competent time as he thinks proper, for specifying or particularizing such general Exceptions, and there is but one and the same term of time to be allow'd to prove those general as well as particular Exceptions; that is, Exceptions in General being admitted, if a Probatory Term be assigned to prove them, and after that Term is expired, special Exceptions

assignandus alius seu novus terminus ad illas probandas, sed pro ducendi sunt testes infra diem probatorium datum, pro illis generalibus exceptionibus probandis.

#### 44. *De juramento Suppletorio.*

**H**OC Juramentum potest peti, & decerni solet in omnibus causis maritimis; de forma verò allegandi causas ut illud tibi deferri obtineas, de tempore & modo illud petendi, tractatur in Practica Curiarum Ecclesiasticarum.

#### 45. *De Exhibitione Instrumentorum.*

**D**E exhibendis Instrumentis, & allegationibus in ea parte requisitis, de responsis ejusdem per procuratores, & partes principales dandis, de forma declarandi eos pro confessis, si recusarint respondere, vel non plene responderint, lege titulos de his specialiter scriptis in Practica prædicta, his tamen mutatis & variatis; Si procurator, pars principalis, vel testes, recusaverint præstare juramentum de respondendo, vel fideliter deponendo super libello vel quibuscunque aliis propositis, super quibus de re teneatur respondere & deponere, Judex potest eos carceribus, propter hujusmodi contempnum committere, donec hujusmodi juramentum præstiterint vel eos monere ad hujusmodi juramentum pronunciare eos incidisse in eandem poenam, & eos compellere per incarcerationem ad solutionem ejusmodi summæ.

tions are offered, another Term for proving them is not to be assigned; but the *Witnesses* are to be produced within the time assigned to make Proof of these General Exceptions.

## 44. Of the Suppletory Oath.

**T**HIS Oath may be prayed, and is wont to be decreed in all Maritime Causes. For the Form of alledging the Reasons for praying it, and the Time and manner of praying it; Mr. Clerke refers to his Practice in the Ecclesiastical Courts.

## 45. Of exhibiting or producing Instruments by way of Proof.

**F**OR the manner of exhibiting Instruments, what Allegations are necessary on that occasion, the answers to be made to them by Proctors or principal Parties, and the Form of declaring them, pro confesso; if they do not answer, or at least not fully, Mr. Clerke refers to the Ecclesiastical Practice, with this difference, that if the Proctor, principal Party, or Witnesses, refuse to be sworn to make faithful answer to the Articles of the Libel, or other matter propounded, to which they are by Law bound to answer, the Judge may commit them to Prison for such Contempt, till they submit to be sworn, and compel them by Imprisonment to pay the Penalty of such Contempt.

## 46. Of

46. De *comparatione* *Literarum*.

**S**imiliter de forma & modo exhibendi instrumenta, & allegandi ad finem, ut fieret comparatio, & de tenore relationis comparitorum, & de exhibitione ejusdem, ceterisque in ea parte requisitis, lege titulos de his scriptos, Capitulis Ecclesiasticis, &c.

47. De *Exhibitione Instrumentorum in lingua Gallica, Italica, vel Teutonica ad probationem libelli, vel aliorum Propositorum*.

**S**i instrumentum aut scriptum aliud, faciens ad probationem Propositorum, ex parte tua, vel mandatum procuratorium sit scriptum in aliqua lingua prædicta, vel quacunque alia extranea lingua, tunc Procurator ea exhibens; (diceret) *In probationes contentorum in libello, vel talibus propositis ex parte mea, exhibeo quoddam instrumentum tali lingua* Et lingua Anglicana juramento oneratur de fideliter transferendo hujusmodi instrumentum prædictum quam copiam translata. Tunc Judex juramento onerabit aliquem in hoc negotio peritum, ac probum & honestum, monebitque eum ut peritur.

## 46. Of comparing Letters.

**F**OR the Manner and Form of exhibiting Instruments and offering Allegations to the end a Comparison may be made, and the Tenor of the Report of the Comparators, and exhibiting the same, and other things requisite in that behalf, Mr. Clerke likewise refers to the Ecclesiastical Practice.

## 47. Of exhibiting Instruments in a Foreign Language, for Proof of the Libel or other Matters propounded.

**I**F any Instrument or Writing making Proof of Matters propounded in your behalf, or any Proxy be written in a Foreign Language, then the Proctor exhibiting the same shall say, In Proof of the Contents of the Libel, or such Matters proposed on my Part, I exhibit a certain Instrument in such a Language, and will be sworn to produce a faithful Translation of the same. Then the Judge shall swear some honest and skillful Person for that Purpose, and admonish him as is pray'd.

## 48. Of



48. De Exhibitione Copiae translata cum Originali, & petitione procuratoris exhibentis.

**I**ntroducto & exhibito dicto Instrumento originali, cum vera copia translata in vim juramenti dictae personae, ut supra, juratae Procurator dicet ex superabundanti: *Exhibeo dictum instrumentum, una cum vera copia ejusdem, in linguam Anglicanam translata; Et allego omnia & singula in dicto instrumento contenta esse vera, & habita, gesta, facta & expedita prout in eodem continetur, & copiam exhibitam esse fideliter translata, & concordare cum originali.* admissa ista allegatione praestabit juramentum quod fideliter posuit & uti possit responsis Procuratoris & partis principalis; & jurandus est procurator adversarii de respondendo in primo, ac danda sunt responsa procuratoris; & in omnibus est procedendum, ut in titulo superscripto, de Exhibitione Instrumentorum, &c. Quo facto dicet procurator, *Peto copiam translata Instrumenti exhibiti registrari, & facta registratione, originale retradendum decerni & tantam fidem adhibendam copiae translatae quam Originali.* Tunc Judex: *Decernimus ut petitur; curet tamen procurator, ut instrumentum originale remaneat penes registrarium, ut procurator (tamen instrumentum) adversarii, & adversarius ex inspectione ejusdem informari possint quid & qua de re respondeant.*

48. Of the manner of exhibiting the translated Copy, with the Original and the Proctor's Petition who exhibits it.

**T**HE said Original Instrument and translated Copy, being brought in and exhibited, by virtue of the Oath of the said Person before sworn, the Proctor shall further alledge, I exhibit the said Instrument, together with a Copy of the same translated into English; and I alledge, that all and every the Contents of the said Instrument are true, and were acted and done as is therein contained, and that the Copy exhibited is a faithful Translation, and agrees with the Original. This Allegation being admitted, he shall swear, that he hath faithfully put his Allegation; and he may make use of the Proctor's and principal Party's Answers. And the Adversary's Proctor is to be sworn to make answer to the same against the next Court-day; and the Proctor's Answers being so made, the rest of the Proceedings are in all Points to be the same as in the 45th Chapter. This being done, the Proctor shall alledge, I desire this translated Copy may be registred, and an Order when that is done, that the Original may be re-deliver'd, and as much Faith or Credit given to the Copy as to the Original. Then the Judge shall decree as pray'd; but the Proctor must take care that the Original Instrument be lodged with the Register, that the Adverse Party, or his Proctor may inform themselves what, and how to answer.

49. *De Conclusionē in causa, de Informationibus dandis Judici ante prolationem sententiæ, & de prolatione ejusdem.*

**D**E his omnibus titulis ac aliis, in ea parte incidentibus, lege titulos in dicta Practica Curiarum Ecclesiasticarum, specialiter scriptos,

50. *De Appellatione à Sententia definitiva.*

**A**ppellare licet in quacunque sententia definitiva sive decreto interlocutorio habente vim definitivæ sententiæ, sive viva voce apud acta coram Judice tempore latæ Sententiæ vel interpositi decreti hujusmodi, sive coram Notario publico & testibus infra decem dies ad appellandum indultos, de statutis hujus regni, de modo & forma interponendi has Appellationes, [lege titulos] scriptis in causis Ecclesiasticis. Quære tamen utrum licet appellare à sententia lata in Possessorio; quia ea potest reparari in Petitorio, sive coram eodem Judice, sive Judice appellationis.

49. Of the Conclusion, and giving Informations to the Judge before Sentence is pronounced, and of the manner of pronouncing the same.

**F**OR all these, and other incident Matters, Mr. Clerke refers to the Ecclesiastical Practice.

50. Of an Appeal from a Definitive Sentence.

**A**N Appeal is allowed from any Definitive Sentence, or Interlocutory Decree, that has the Force of a Definitive Sentence; and it may be done either *vivâ voce*, in the Acts before the Judge at the time the Sentence is pronounced, or such Decree interposed; or else before a Notary Publick and Witnesses, within the Ten Days that are allow'd to appeal in, by the Statutes of this Realm. Of the Manner and Form of interposing such Appeals, Mr. Clerke advises to read the Ecclesiastical Practice. But it is doubted whether an Appeal will lie against a Sentence pronounced in a Possessory Suit; because the Party aggrieved may be redress'd in a Petitory one, either by the same Judge, or the Judge of the Appeal.

51. *Quod non licet appellare à gravaminibus seu decreto quocunque interlocutorio non habente vim sententiæ definitivæ.*

**L**icet dederis materiam concludentem defensionis tuæ, vel concludentes exceptiones contra testes adversarii, vel infra terminum probatorium petieris commissionem ad partes pro testibus examinandis, vel similia, & Judex ea omnia admittere recusaverit, semper practicum fuit, quod non licet ab eisdem gravaminibus, nec à quocunque decreto interlocutorio non habente vim sententiæ definitivæ appellare; quia hæc omnia possunt reparari in appellatione à sententiâ definitivâ, & licet non allegata allegare, & non probata probare.

52. *Quid sit Gravamen Irreparabile & decretum habens vim sententiæ definitivæ, à quibus licet appellare.*

**S**i quis arrestabit bona tua tanquam ad se vel ad alium spectantia, & tu debito tempore recuperasti coram Judice, & allegasti te habere interesse in hujusmodi bonis, petistiq; te admitti ad proponendum & probandum illud interesse, & jus ac justitiam tibi ministrari, Judex tamen hæc petita rejicit aut tacitè procedendo ad alia tuæ petitioni contraria, vel præjudicialia, utpote procedendo ad primam, secundam, & tertiam defaultam, ut possit in die quarto adjudicare tua bona alteri, vel expressè rejiciendo interesse, tuum; hoc dicitur Gravamen Irreparabile, & Decretum interlocutorium habens

51. That no Appeal lies from Grievances, or a Decree not having the Force of a Definitive Sentence.

**A**ltho' you should offer Matter conclusive of your Defence, or Conclusive Exceptions against your Adversary's Witnesses, or pray a Commission for Examination of Witnesses within the Term, Probatory, or the like, and the Judge refuses to admit all these; yet it was never customary to appeal from such Grievances, nor from any Interlocutory Decree that has not the Force of a Definitive Sentence; because all these may be redressed in an Appeal from the Definitive Sentence, and then you may alledge and prove whatever you have not alledged and proved already.

52. What is meant by an Irreparable Grievance, and Decree having the Force of a Sentence, from which one may appeal.

**I**F any one arrests your Goods either as belonging to himself or some other Person, and you thereupon resort to the Judge, in due time and alledge that you have an Interest in such Goods, and pray that you may be admitted to propound and prove the said Interest, and that Right and Justice may be done you: If in that Case the Judge rejects your Petition, either expressly or tacitly, by proceeding to things contrary or prejudicial; as, suppose to the First, Second, and Third Defaults, in order to adjudge your Goods to another on the Fourth Day, this is call'd an Irreparable Grievance, and Interlocutory Decree, having the Force of



bens vim sententiæ definitivæ. Nam non speratur alia sententia de hac quæstione in eodem Judice ; & si in hoc casu non appellaveris, adjudicabuntur tua bona alteri.

Similiter, si Creditor tuus egerit contra te pro debito, & tu ad impediendum litis processum, pactum debitum non petend' vel pendentia litis coram alio Judice competente & pro eodem debito, ac Judex aut tacitè, ut supra, admittendo libellum & procedendo in causa, expressè rejecerit hujusmodi allegata licet appellare, ut suprà. Nam hæc non possunt reparari in appellatione à sententia definitiva, nec de ea speratur alia sententia ; quoad plures causas tangentes hoc decretum interlocutorium, lege tit. *Quid sit Decretum interlocutorium*, &c. in causis Ecclesiasticis.

53. *De Appellationibus in Curiam Admiralitatis interponendis.*

**Q**uemadmodum appellare licet à Curia Admiralitatis à sententiis definitivis & decretis prædictis interlocutoriis habentibus vim sententiæ definitivæ, ad Serenissimam Regiam Majestatem, & Curiam Cancellariæ, ita ab omnibus sententiis, decretisque interlocutoriis & gravaminibus per quoscunque Judices Civiles particulares, seu Vice-admirales, in quibuscunque partibus hujus regni latis, licet appellare, ad honorandum Dominum, Dominum magnum Angliæ Admirallum, ejusque supremam Curiam Admiralitatis Angliæ, & egregium virum præsidentem Judicem sive locum tenentem quemcunque ejusdem Curiae. Judexque hujusmodi habet cognitionem causarum appellationum hujusmodi, nec non querelarum nullitatis quarumcunque.

of a Definitive Sentence : For you cannot hope for another Sentence upon this Matter from the same Judge ; and in this Case, if you do not appear, you will lose your Goods. In like manner, if your Creditor has commenc'd a Suit against you for Debt ; and you, to put a stop to the Proceß, alledge that a Suit for the same Debt is depending before some other competent Judge, or the like ; if the Judge notwithstanding proceeds tacitly in the Cause by admitting a Libel, or expressly rejects your Allegations, then you may appeal ; for these things cannot be redress'd by an Appeal from the Definitive Sentence ; nor can you hope for any other Sentence upon them.

53. Of lodging Appeals from and in the Court of Admiralty.

**A**S Appeals will lie from the aforesaid Definitive Sentences, and Interlocutory Decrees, having the Force of Sentences, of the Court of Admiralty, to the King's Majesty and the Court of Chancery ; so from all Sentences, Interlocutory Decrees and Grievances, of any inferior Judges, or Vice-Admirals wheresoever they will lie, to the Lord High Admiral and his High Court of Admiralty, and the Judge or President of the same, who may take cognizance of such Causes of Appeals, and of any Complaints of Nullities whatsoever.

54. *De Inhibitionibus*      *appellationibus pra-*  
*dictis.*

**I**nterposita appellatione in casibus praedictis, abundus est Judex, at in Causis Ecclesiasticis ----- etque inhibitio non solum continebit inhibitionem Judiei à quo est appellatum, ne ulterius procederit in causa, & parti appellatae in specie, verum etiam arrestationem personae appellatae directae ut Warrantum seu mandatum primum aut Originale in causa civili ad capiendum eundem per scapulas, donec comparuerit ad respondendum dicto appellanti in causa appellationis.

55. *De Executione & Certificatorio dictae Inhibitionis.*

**E**st Judici, parti appellatae in specie, Registrario, ac ceteris quibuscunque in genere inhibend' ut in causis Ecclesiasticis. Pars verò appellata est arrestanda, detinenda in carceribus, nisi idoneè sit per eum fidejussor de legitime comparendo, ut in titulo *de interpositione cautionis, &c.* (4) & [inhibitio] est certificanda, ut Warrantum Originale.

## 54. Of Inhibitions upon the aforesaid Appeals.

**A**N Appeal being lodged or interposed, (as the Civilians term it), in the Cases aforesaid, an Inhibition is to be pray'd from the Judge to whom the Appeal is made, (Vide Confet. Part V. § 1.) and that Inhibition does not only inhibit the Judge, and particularly the Party appellate, from proceeding further in the Cause; but contains an Arrest of the Person appellate, in the same manner as an Original Warrant in a Civil Cause; to take him into Custody till he appears to answer the Appellant in the Cause of the Appeal.

## 55. Of the Execution and Certificate of the said Inhibition.

**T**HE Inhibition must be to the Judge, to the Party Appellate in particular, to the Register, and all others in general, as in Ecclesiastical Causes. But the Party Appellate must be arrested and imprison'd, unless he gives sufficient Bail for his Lawful Appearance, as in the Fourth Chapter; and the Inhibition is to be certified in the same manner as an Original Warrant.

## 56. Of

## 36. De dandis Fidejussoribus in causa appellationis.

**S**I Actor in primâ instantia appellaverit, non est admittendus ad libellandum, nisi edictis fidejussoribus ad effectus illos, ad quos in causa civili originali tenetur. Si reus in prima instantia appellaverit, tenetur dare fidejussores, ad omnes effectus quos reus in prima instantia dederit. Et nota, quod licet Actor sit appellatus, tenetur tamen fidejubere de iudicio sisti, expensis solvendis & ratihabitione procuratorii.

## 57. De modo procedendi in causa appellationis.

**D**E modo & forma procedendi in his appellationibus, quoad oblationem libelli, decretum ad transmittendum processum, decretum pro parte principali, de beneficio etiam appellantis à sententia definitiva (quod possit non allegata allegare, & non probata probare) & de modo justificandi causam appellationis à gravaminibus, de exhibitione processus Judicis à quo, & instrumenti appellationis, deque cæteris Judiciariis processibus in causis appellationum, lege tit. de his specialiter conscriptos in dicta Practica Ecclesiastica: Hoc semper excepto, Quod Judices Ecclesiastici in puniendis contumacibus & contemptoribus, utuntur gladio spiritali, nempe, sententia Excommunicationis ad contumaces hujusmodi reprimendos; Judex vero Civilis, sive in causis originalibus, sive in causis Appellationum, utitur gladio seculari, (id est) carceribus & pœnis pecuniariis.

56. Of giving Bail in a Cause of Appeal.

**I**F the Plaintiff appeals in the first Instance, he is not to be admitted to libel, unless he gives Bail to the same Effects as he is obliged in an Original Civil Cause. If the Defendant appeals in the first Instance, he must give Bail to the same Effects as the Plaintiff did in the first Instance. And observe, that the Plaintiff does appeal, he is obliged to give Bail to abide the Decree of the Court, pay Costs, and to confirm and allow whatsoever his Proctor does in his behalf.

57. Of the Manner of proceeding in Appeals.

**O**F the manner of proceeding in these Appeals, as to the offering of the Libel, the Decree for transmitting of the Process, the Decree for the Appearance of the Party principal, the Privilege of the Appellant, to alledge and prove such Things as before he had not alledged or proved, the manner of justifying the Cause of Appeal from Grievances, and exhibiting the Process of the Judge from whom it is appealed, and the Instrument of Appeal, and other Judicial Proceedings in Causes of Appeals; read the Ecclesiastical Practice, with this Distinction, that the Ecclesiastical Judges make use of the Spiritual Sword to punish Contempts and Contumacy, that is, Excommunication; and the Civil Judge, (i. e. of the Admiralty) of the Secular Arm, that is, Imprisonment, or pecuniary Punishments.



58. *De Petitione Decreti ad dicendam causam quare sententia Executioniemandari non deberet.*

**S**I Pars, contra quam lata est sententia, appellaverit tempore latae sententiae, quod est, apud acta; & assignandi fuerint sibi termini ad prosequendum eundem, & ad certificandum de prosecutione ejusdem, tunc si interim non fuerit Judici inhibitorium, Procurator qui obtinuit sententiam, petere debet partem ream vocandam fore ad dicendum causam quare sententia executioni mandari & expensae taxari non debent; hoc decretum solummodo continet citationem seu monitionem, & non arrestationem. Sed si non fuerit appellatum tempore prolationis sententiae, tunc lapsis quindecim diebus datis de statutis hujus regni ad appellandum, à die seu tempore prolationis sententiae, petendum est dictum decretum ad dicendum causam quare sententia non deberet executioni mandari, ut supra.

59. *De forma demandandi sententiam executioni.*

**S**I ille qui appellaverit extrajudicialiter, citatus ad dicendum causam quare sententia, &c. allegaverit se debitis loco & tempore appellasse, ut in causis Ecclesiasticis, tunc statuendi sunt sibi termini ad prosequendum & certificandum, vel ad docendum esse appellatum, & in illis lapsis, nullaque executâ inhibitione in Judicem, sententia potest executioni mandari in praesentia procuratoris ut supra allegatus fuisse appellatum. Similiter si is qui appellavit

58. Of the Petition for a Decree to shew Cause why the Sentence should not be put in Execution.

**I**F the Party against whom the Sentence is pronounced, appeals at the time of the Pronunciation, which is in the Acts of Court, and a time is appointed him for prosecuting and certifying his Appeal, then, if within that time no Inhibition is granted, the Proctor in whose favour the Sentence pass'd, ought to pray the Adverse Party may be cited, to shew Cause why the Sentence should not be put in Execution, and the Costs taxed. This Decree contains only a Citation or Monition, and not an Arrest. But if there is no Appeal when the Sentence is pronounced, then, after the Fifteen Days allow'd by the Statutes of the Kingdom to appeal in, the said Decree for shewing cause why the Sentence should not be put in Execution, is to be pray'd, as before.

59. Of the Form of putting the Sentence in Execution.

**I**F the Person who has appealed, extrajudicially being cited to shew Cause why the Sentence should not be put in Execution, should alledge, that he has appealed in due Place and Time, then a Term is to be assigned him for prosecuting, and certifying or shewing that he has appealed; and that Term being expired, and no Inhibition served upon the Judge, the Sentence may be put in execution in the Presence of the Proctor alledging the Appeal. The same is to be done if he  
who

vit tempore latae sententiae, & citatus, ut supra, ad dicendum causam quare, &c. vel per se, vel per ejus procuratorem comparens nullam causam concludentem allegaverit, ob quam sententia non deberet executioni mandari. Si vero appellans citatus, ut supra, non comparuerit, tunc in poenam ejus contumaciae accusari praconzati, & pro contumaci pronunciati, est executioni mandata, & est quoad praemissa in omnibus procedendum, ut in causis Ecclesiasticis.

60. *De decreto contra partem principalem ad solvendum sortem principalem & expensas.*

**P**ostquam Judex in poenam contumaciae partis comparentis, sive in praesentia procuratoris, nullam ut supra allegantis causam, ob quam sententia non deberet executioni mandari, demandaverit sententiam executioni, exhibenda est schedula expensarum quae taxandae sunt, & juramentum super taxatione praestandum, ut in causis Ecclesiasticis. Tunc dicet procurator, *Peto partem principalem monendi fore decerni ad solvendum tam sortem principalem quam expensas taxatas infra aliquod tempus competens, & casu quo non solverit, capiendi fore per scapulas, & in carceribus custodiendum donec solverit.* Judex, decernimus ut petitur, statuendo certum tempus solutionis, utpote infra viginti, triginta, vel quadraginta dies juxta Judicis arbitrium.

who appealed at the time the Sentence was pronounced, being cited to shew Cause why it should not be put in Execution, does by himself, or his Proctor, alledge any Matter that is not conclusive. But if the Appellant, being cited, does not appear, then in Penalty of his Contumacy, after he has been accused thereof and proclaimed in Court, the Sentence is to be put in Execution, and the Proceedings, as to the Premisses, are to be in all things the same as in Ecclesiastical Causes.

60. Of the Decree against the Principal Party, to pay the thing adjudged and the Charges.

**A**fter the Judge in Penalty of the Contumacy of the Party not appearing, and in Presence of his Proctor shewing no Cause to the contrary, shall have ordered the Sentence to be put in Execution, a Schedule of the Costs is to be exhibited and taxed, upon the Proctor's Oath that they have been disbursed. Then the adverse Proctor shall say, I desire the Party principal may be admonished to pay the Thing adjudged, as well as the Costs taxed, within some competent time; otherwise, that he may be arrested and imprison'd, till he does pay. Which Petition the Judge shall grant, appointing a certain time for the Payment, as Twenty, Thirty, or Forty Days, according as the Judge pleases.

61. Of

## 61. De Decreto sive Monitione.

**I**Ntroducito mandato prædicto cum certificatorio in dorso, quod Reus quæsitus latitavit, quo minus possit moneri juxta tenorem ejusdem, petat procurator ut sequitur: *Allego N. partem principalem fuisse quæsitum ad effectum monendi eum, juxta tenorem mandati per me introducti, & quod latitavit & latitat, quo minus personaliter moneri possit ad solvendum: quare peto ejus fidejussores monendos fore decerni ad solvendum tam sortem principalem, quam expensas citra diem competentem, alioquin capiendos fore, etiam decerni, donec solverint.*

## 62. De Decreto contra fidejussores ad solvendum rem adjudicatam, omisso decreto contra partem principalem.

**S**I pars principalis condemnata habitat extra regnum, vel nullum certum habuerit domicilium infra regnum, ita ut non possit moneri ad solvendum expensas adjudicatas, Judex, si ita placeat, saltem si de præmissis fides facta fuerit, vel de eo notorium sit, quam primum lapsi sunt dies ad prosequendum & certificandum, decernere fidejussores vocandos fore ad dicendum causam quare non debet sententia executioni mandari, &c. & ea potest aut in eorum præsentia, aut in pœnam contumaciæ executioni demandari, non vocata principali parte. Similiter etiam postquam Judex demandavit sententiam executioni, & expensas taxavit, potest si vult ex causis præmissis decernere

61. Of the Decree or Monition.

**T**HE *aforesaid Warrant or Monition* being brought into Court, with a Certificate indorsed that the Defendant absconds so that he cannot be admonished according to the Tenour thereof; let the Proctor pray and say as follows, I alledge that N. the Party Principal has been sought after to the intent of admonishing him, according to the Tenour of the Mandate or Warrant by me brought into Court; and that he has absconded, and does now abscond, so that he cannot be personally admonished. Wherefore, I pray a Decree for admonishing his Bail to pay the Thing adjudged, and Costs within some competent time, or otherwise, a Decree for their being taken into Custody till they do pay.

62. Of the Decree against the Bail to pay the Thing adjudged, omitting the Party Principal.

**I**F the Party Principal who is cast, lives beyond Sea, or has no fix'd Habitation within the Kingdom, so that he cannot be admonished to pay the Costs adjudged; the Judge, if he pleases, at least, if he is satisfied of the Premisses, may, as soon as the Term allow'd for certifying and prosecuting the Appeal is elapsed, decree the Bail to be cited to shew cause why the Sentence should not be put in Execution, without taking notice of the Party Principal. In like manner, after the Sentence is put in Execution, and the Costs tax'd, the Judge may, if he pleases, for the Causes pre-

M

mised,



cernere monitionem contra fidejussores ad solvendum res judicatas, omissa, ut supra, monitione contra partem principalem.

63. *De Peremptoria Instantia.*

**Q**uemadmodum si appellatio non sit prosecuta infra terminum à jure indultum, vel infra terminum datum per Judicem, à quo ad proseguendum appellatio sit deserta, quamvis appellans habuerit justam causam appellandi, ut notatur in titulo in *Practica Ecclesiastica*, de his specificè tractantibus; Ita, si causa civilis, postquam sit instituta, non fuerit finita, & sententia infra annos tres lata, perempta est instantia; & ut à peritis audivi, nulla causa objici aut allegari potest ad impediendum eandem. Sed Judex, nullo habito respectu ad justitiam causæ, debet pronunciare instantiam esse peremptam, atque Reum ab Judicii observatione, una cum expensis dimittere.



**F I N I S.**

mised, decree a Monition against the Bail to pay the Thing adjudged, omitting, as is said before, to admonish the Party Principal.

### 63. Of a Peremptory Instance.

**A**S in the Case of an Appeal, if it be not prosecuted within the Term allow'd by the Law, or be deserted within the Term allow'd by the Judge from whom the Appeal is made, altho' the Appellant had ever so much Right to appeal; so in a Civil Action, if after it is commenced, it be not ended, and Sentence pronounced within Three Years, the Instance drops. And Mr. Clerke says, as he has heard from the Skilful, no Reason or Cause can be objected or alledged to the contrary; but the Judge, without any regard to the Justice of the Cause, ought to declare, that the Instance is dropt, and to discharge the Defendant from any farther Attendance, together with Costs.

**Laus Deo.**

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